

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.612 OF 2022

Akshay S/o Anil Patil .Vs. State of Maharashtra, through P.S.O., P.S. Mouda, Tah.
Mouda, Dist. Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.S. Giripunje, Advocate for the applicant.

Shri S.M. Ghodeswar, A.P.P. for the non-applicant No.1/State.

Shri Navneet Gaikwad, Advocate for the non-applicant No.2/victim.

CORAM : ANIL S. KILOR, J.

DATED : 26/09/2022

Heard.

2. The applicant is seeking pre-arrest bail in Crime No.401 of 2022, dated 27.06.2022, registered with Police Station Mouda, District: Nagpur, for the offences punishable under Sections 363, 506 and 376(2)(j) & (n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO Act").

3. From the statement of the victim and the First Information Report (FIR), it can be seen that there was a love affair between the applicant and the victim. The victim is of 17 years and 6 months of age and the learned counsel for the victim has stated that still she is staying with the applicant.

4. Moreover, it can be seen that the applicant was arrested on next day, he was released on bail by the learned Judicial Magistrate First Class, Mouda, Dist. Nagpur.

However, after granting bail to the applicant, Section 376(j) & (n) of the Indian Penal Code and Sections 4 and 6 of the POCSO Act, were added.

5. The co-ordinate bench of this Court in the case of *Sunil Madhav Patil Vs. State of Maharashtra*¹ has observed thus:

“9. In view of the increasing offences against the women especially of rape, the legislature and judiciary both found it obligatory to deal these offences with severe punishment and women can be protected if the laws are made rigorous. Therefore, report of Justice Verma Committee was accepted and necessary and significant amendments were made in these two sections. A wrong doer is to be punished, guilty is to be convicted. However, at the stage of bail, the Court has to consider prima facie under what circumstances the offence is committed by the accused. In the Criminal law, the Court cannot ignore the intention or motive behind the act and that is an important factor in the commission of offence so also to decide the quantum of sentence at the end of trial, so in the case of bail.

10. The offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So

¹ 2016 ALL MR (Cri) 1712

also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There are instances of rape where a man and a woman both are in love with each other and get involved into sexual relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape.

11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed

in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.

12. The overall considerations while deciding such applications can be summed up as -

When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

(i) What is the age of the prosecutrix, who is minor.

(ii) Whether the act is violent or not.

(iii) Whether there are antecedents or not.

(iv) Whether the offender is capable of repeating the Act or not.

(v) Whether there is likelihood of threats or intimidation, if at all the boy is released.

(vi) Whether any chance of tampering with the material witnesses when their statements are recorded.

(vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to

get employment and to plan, stabilize and secure his future.”

6. In the teeth of the above referred observation, and considering the fact that, there was love affair between the applicant and the victim and still the victim is staying with the applicant, I am of the opinion that further custodial interrogation of the applicant is not necessary. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) Order passed by this Court on 05.09.2022, granting *ad-interim* anticipatory bail, is confirmed with modification that the applicant shall attend the concerned Police Station as and when his presence is required.

The criminal application is **disposed of** accordingly.

JUDGE