

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

CRIMINAL APPLICATION (ABA) NO.634 OF 2022

Prashant Champat Kumare .Vs. State of Maharashtra, through P.S.O., P.S.
Pandharkawda, Dist. Yavatmal and another

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

Court's or Judge's Order

Shri P.W. Mirza, Advocate for the applicant.

Shri S.D. Sirpurkar, A.P.P. for the non-applicant No.1/State.

Shri A.S. Dhore, Adocate for the non-applicant No.2.

CORAM : ANIL S. KILOR, J.

DATED : 22/11/2022

Heard.

2. The applicant is seeking pre-arrest bail in Crime No.89 of 2022, registered with Police Station Pandharkawda, District: Yavatmal, for the offences punishable under Sections 376(2)(j), 354, 354-A, 354-D, 294, 506 of the Indian Penal Code and Sections 4 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO Act”).

3. Shri Mirza, learned counsel for the applicant submits that there was a love affair and the alleged crime is the outcome of the same.

4. On the other hand, Shri Sirpurkar, learned APP strongly opposes the present application and submits

that the offence is very serious. Accordingly, he prays for rejection of the present application.

5. Shri A.S. Dhore, learned counsel for the non-applicant No.2/victim reiterates the submission of the learned APP.

6. I have perused the First Information Report (FIR) and the application.

7. From the FIR, *Prima facie* it appears that there was a love affair between the applicant and the victim.

8. 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

¹ 2016 ALL MR (Cri) 1712

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 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.”

9. The applicant is a young boy. Moreover, as there is no possibility that in near future the trial will commence, I am of the opinion that the applicant should be released on interim bail with certain stringent conditions.

- a) The criminal application is **allowed**.
- b) It is directed that in the event of arrest of the applicant in Crime No.89 of 2021, registered with Police Station Pandharkawda, District: Yavatmal, for the offences punishable under Sections 376(2)(j), 354, 354-A, 354-D, 294, 506 of the Indian Penal Code and Sections 4 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO Act”), the applicant shall be released on interim bail on furnishing P.R. Bond of Rs.15,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the territorial jurisdiction of Tq. Kelapur, Dist. Yavatmal and the applicant undertakes to surrender his mobile phone for the purpose of investigation.
- d) The applicant shall attend the concerned Police Station 30th November, 2022 till 3rd December, 2022 between 10.00 a.m. to 12.00 noon, which shall be considered as deemed custody for the purpose of recovery of mobile phone of the applicant.

JUDGE