

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

CRIMINAL APPLICATION (BA) NO. 1088 OF 2022

Kisan Arun Wakade **Versus** State of Maharashtra, through PSO
Pandharkawada, Tq. Kelapur, 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 N.P.Hiwase, Advocate for the applicant.

Ms K.R.Deshpande, A.P.P. for the non-applicant No.1/State.

Shri A.M. Balpande, Advocate for the non-applicant No.2
(appointed)

CORAM : ANIL S. KILOR, J.

DATED : 22/09/2022

Heard.

2. The applicant is seeking bail in connection with Crime No. 317/2022 registered with Police Station Pandharkawada, Tq. Kelapur, Dist. Yavatmal, for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code, 1860 and Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. Considering the statement of the victim, wherein she has admitted that there was love affair since long between her and the applicant and further the age of the applicant i.e. 24 years, I am of the opinion that the applicant shall get one opportunity in life. In view of the

judgment 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 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.

¹ 2016ALL MR (Cri) 1712

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."*

4. Learned APP and the learned counsel for the non-applicant no.2/victim are strongly opposing the preent appliation on the ground that the victim was minor on the date of alleged incident and therefore, even if there was love affair, this Court may not take leninent view while considering the prayer of the applicant for grant of bail.

5. In the light of the above observations made in the judgment of *Sunil Madhav Patil vs State of Maharashtra (supra)*, I am of the opinion that, the applicant is entitled for grant of bail on some strigent conditions. Accordingly, I pass the following order.

- a) The criminal application is **allowed**.

- b) It is directed that in connection with Crime No. 317/2022 registered with Police Station Pandharkawada, Tq. Kelapur, Dist. Yavatmal, for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code, 1860 and Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012, the applicant shall be released on bail on furnishing P.R. Bond of Rs.20,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the territorial jurisdiction village Umari Tq. Kelapur, Dist. Yavatmal, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address and shall attend the concerned Police Station on 1st of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- e) Fees of the learned counsel for the non-applicant No.2 is quantified as per Rules.
- f) The applicant shall not tamper with the prosecution witnesses.

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

[ANIL S. KILOR, J.]