

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

CRIMINAL APPLICATION (BA) NO. 1350 OF 2021
(Latari @ Bandu Laxman Choudhari ...Versus... State of Maharashtra)

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

Court's or Judge's orders

Mr. I.G.Meshram, Advocate for the applicant.
Mr. S.M.Ghodeswar, APP for the respondent/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/02/2022

1] Heard Mr. Meshram, learned counsel for the applicant and Mr. Ghodeswar, learned APP for the respondent/State.

2] The applicant is arraigned for the offence punishable under Sections 376(2)(i), 354(B) of the IPC and Sections 3, 4, 5 (k) and 6 of the POCSO Act. The allegations are that, on 1.12.2020, the informant suspected that his daughter was pregnant, as a result of which she was taken to the Doctor, who opined that she was pregnant. Based upon the suspicion that it was the applicant who was the cause behind it, the FIR was registered against the applicant on 6.12.2020, suspecting that during the period 6.8.2020 to 2.12.2020, the applicant may have had sexual intercourse with the victim, due to which the pregnancy remained.

3] Mr. Meshram, learned counsel for the applicant submits that the DNA report of the applicant which included a parentage test result, is stated to be negative and the applicant was excluded to be the biological father from the sample of fetus, which is taken and preserved. He therefore submits that the applicant is entitled to bail.

4] Mr. Ghodeswar, learned APP for the State opposes the application and submits that the DNA report is not the only piece of evidence, but the statement of the mother implicates the applicant and therefore, the application be rejected.

5] The basic allegation of the applicant having had intercourse with the victim who is said to be mentally disabled, resulting into pregnancy is on the basis of a mere suspicion voiced by the mother and nothing else. As against which the DNA report dated 28.1.2021 positively excludes the applicant from being the biological father of the fetus. That being the position, in my considered opinion, the applicant has made out a case for bail. Hence the following order.

6] The application is allowed.

The applicant be released on bail for offence punishable under Sections 376(2)(i), 354(B) of the IPC and

Sections 3, 4, 5 (k) and 6 of the POCSO Act, in Crime No. 365/2020 on his executing PR bound in the sum of Rs.50,000/- with two solvent sureties of like amount.

The applicant shall not enter the village Pusa, Tq. Warora, Dist. Chandrapur, during the course of the trial.

The applicant shall also not tamper with the evidence or try to influence the prosecution witnesses in any manner whatsoever.

The applicant shall also attend each and every date before the Sessions Court and shall ensure that the trial is not protracted on his count.

JUDGE

Rvjalit