

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

CRIMINAL APPLICATION (BA) NO.63 OF 2023

Pankaj s/o Ashok Ukey Vs. State of Maharashtra, PSO, PS Umred, Nagpur and another

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

Court's or Judge's orders.

Shri S.N. Nadeshwar, Advocate for applicant.
Shri N.R.Rode, APP for non-applicant no.1/State.
Ms Falguni Badani, Advocate appointed for non-applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 17, 2023.

This is an application under Section 439 of the Code of Criminal Procedure (for short "Cr.P.C.").

2. The applicant has been arrested on 02.11.2022 in Crime No.644/2022 registered with Police Station, Umred, Nagpur Rural, Nagpur for the offence punishable under Sections 363, 366A, 376 read with Section 34 of the Indian Penal Code and Section 4,8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. Having heard both sides what transpires from the oral report is that the victim, at the relevant time, was 16 years 10 months old. She was in relationship with Mohan Mandare, the accused no.1. On 01.11.2022, the victim was allegedly kidnapped by both the accused. However, if the evidence is considered in totality, it appears that the victim herself has accompanied Mohan Mandare and the applicant. They went on the motorcycle to an isolated place viz. dilapidated house.

Mohan Mandare asked applicant to wait outside. The victim and Mohan Mandare have established physical relations. Thereafter, they all returned back to the village where villagers accosted them. The FIR is then lodged stating therein that Mohan Mandare, on the pretext of performing marriage, has kidnapped the victim and committed sexual assault. The applicant is said to have aided the crime.

4. Having given thoughtful consideration, the story of kidnapping for couple of hours appears to be an exaggerated version. They went out of the village at about 8:00 p.m. and came back at about 11:30 p.m. Mohan and the victim indulged in sexual activity. The applicant has done nothing except to accompany his friend Mohan. The only allegation against the applicant is that he forced victim to sit on the motorcycle. Said allegation, if considered in totality of the events would set diluted. The victim herself admits that she was in relationship with Mohan Mandare. In the circumstances, it will be difficult to say that the applicant has aided the commission of the crime.

5. The charge-sheet has been filed on 27.12.2022. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant is a labourer but is residing for last many years at the address mentioned in the application.

6. In view of above and considering the nature of allegations against the applicant, no fruitful purpose will be served by keeping him behind the bars. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

7. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

8. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Pankaj s/o Ashok Ukey, be released on bail, in Crime No.644/2022 registered with Police Station, Umred, Nagpur Rural, Nagpur for the offence punishable under Sections 363, 366A, 376 read with Section 34 of the Indian Penal Code and Section 4,8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on he furnishing P.R. Bond in the sum of ₹25,000/- with one surety in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The Applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

(viii) Professional fees of learned advocate appointed for non-applicant no.2 be quantified and paid in accordance with Rules.

The application is disposed of in the above terms.

JUDGE

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