

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

CRIMINAL APPLICATION (BA) NO. 77/2023

Uttam Waman Kapgate .vs. State of Maharashtra

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

Court's or Judge's orders

Mr. R. R. Vyas, Advocate for applicant.

Mr. S. S. Doifode, A.P.P. for non applicant no.1-State.

Ms F. Badani, Advocate for non applicant no.2.

CORAM : **ANIL L. PANSARE, J.**

DATE : **MARCH 10, 2023.**

This is an application under Section 439 of the Code of Criminal, 1973. The applicant has been arrested on 07.11.2022 in Crime No.251/2022, registered with Police Station, Duggipar, District Gondia for the offences punishable under Sections 376(2)(n) of the Indian Penal Code, 1860 (for short, the 'IPC') and Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 (for short the 'POCSO Act').

2. Having heard both the sides and having gone through the material placed before me, it transpires that the victim was 17 years 2 months old at the relevant time. She developed relation with the applicant, who was said to be 25 years old at the relevant time. The applicant and the victim indulged into sexual activities.

3. Despite the fact that the victim claimed that the applicant committed sexual intercourse without her consent, the victim continued to meet the applicant. She became pregnant and when the said fact was disclosed to the applicant, the applicant is said to have switched off his mobile.

4. Thus, broadly speaking, the case of the prosecution is that consent has been obtained by fraud as the applicant was not interested in continuing with the relationship.

5. Learned counsel for the applicant, however, points out that one of the reasons why the trial Court has rejected the application is that the DNA report was received. The DNA report is now received and it indicates that the biological father of the child is not the applicant but is one Tikaram Muneshwar, who happens to be the neighbour of the victim. He appears to have exploited the victim.

6. My attention is then invited the First Information Report dated 11.11.2020 registered vide Crime No.282/2020 with same Police Station i.e. Duggipar Police Station for the offences punishable under Sections 376(2) (L), 506 of the IPC and Sections, 4, 6, 8 and 10 of the POCSO Act. The present victim has blamed one Duryodhan Hemne for committing rape. Thus, it appears that many persons have exploited the victim.

7. Learned counsel for the applicant submits that the applicant cannot be blamed as one amongst multiple defences could be that after getting to know that the victim is involved with the other persons, the applicant has stopped meeting the victim. In other words, it is suggested that the applicant was genuinely interested in continuing with the relationship but for the activities of the victim, he restrained from continuing the relationship.

8. The learned A.P.P. joined by learned counsel for the applicant, submits that the most crucial element in this case is

that the victim is “Child” as defined under the POCSO Act and that the consent is insignificant.

9. True it is that the victim is a child under the POCSO Act but she was sexually matured enough to understand the consequence of her deeds. It is nobody’s case that the applicant has taken advantage of her age and exploited her.

10. When inquired, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

11. Considering the peculiar facts of the case so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. Interest of the prosecution can be protected by putting the applicant to appropriate terms.

12. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

13. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Uttam Waman Kapgate, be released on bail in Crime No.251/2022, registered with Police Station, Duggipar, District Gondia for the offences punishable under Sections

376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012 on he executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties 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 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.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence.

(vi) The applicants 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.

The application is disposed of in the above terms.

Professional charges of Ms Falguni Badani, learned appointed counsel for the non applicant no.2 shall be paid as per the rules.

(Anil L. Pansare, J.)