

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

CRIMINAL APPLICATION (BA) NO.80 OF 2023

Kalpesh s/o Rajesh Parteki Vs. State of Maharashtra, through its PSO,, PS
Gondia (Rural), Gondia 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 P. Borkar, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant no.1/State.
Ms Mohini Sharma, Advocate appointed for non-applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 03, 2023.

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

2. The applicant is arrested on 19.12.2020 in Crime No.0433/2020 registered with Police Station, Gondia (Rural), Gondia for the offence punishable under Sections 363, 376(2)(n), 376(3) of the Indian Penal Code and under Sections 5(I) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act").

3. Briefly stated the accusation against the applicant is that he has kidnapped the victim aged 15 years and 3 months on 06.12.2020 and then committed sexual assault.

4. Learned APP has pointed out that the statement of victim is recorded under Section 164 of the Code. It shows that on 04.11.2020 the mother of the victim scolded her.

The victim called applicant on phone. At her instance, the applicant came to her town and took her on motorcycle. The victim informed her elder sister that she is going with the applicant. She stayed in the house of the applicant. On 05.12.2020, the applicant dropped the victim to her house. The mother of the victim again scolded her. Thereafter, the victim forced the applicant to pick her up and take away. The victim's sister was also of the same opinion. The victim then reached to Taluka Sadak Arjuni, District Gondia by bus. The applicant picked her from there. On 07.12.2020, the applicant was of the view that he will drop the victim at her house but victim said that she wish to accompany him to Satara. Accordingly, both went to Satara. From Satara, they went to Pandharpur, Mhaswad, Hivarkwadi etc. On 12.12.2020, the applicant and victim solemnized the marriage. In the meantime, they were indulged into sexual activities. It appears that the police complaint was lodged on 11.12.2020. The police managed to reach the applicant and victim. The victim was then handed over to her parents but the applicant is languishing in jail. The statement of the victim indicates that the applicant has not, in any way, forced her to accompany her and that they were in relationship.

5. Learned APP and learned counsel for the non-applicant no.2/victim have opposed the application on the ground that though the physical relationship was consensual but the fact remains that the non-applicant no.2 was a child,

as defined under the provisions of POSCO Act and her consent is immaterial.

6. True it is that non-applicant no.2 is child but then one cannot ignore that there are no allegations that the applicant has taken advantage of the age of non-applicant no.2 or that he has exploited her in any manner, rather he consistently was of the view that the victim should stay with her parents. It is the victim, at whose instance the applicant was required to take her with him.

7. The charge-sheet has been filed. 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 staying since long at the address mentioned in the application.

8. In the circumstances and considering the nature of evidence against the applicant, no fruitful purpose will be served by keeping the applicant behind bars.

9. 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.

10. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Kalpesh S/o Rajesh Parteki, be released on bail, in Crime No.0433/2020 registered with Police Station, Gondia (Rural), Gondia for the offence punishable under Sections 363, 376(2)(n), 376(3) of the Indian Penal Code and under Sections 5(I) and 6 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 the learned counsel appointed for non-applicant no.2/victim be quantified and paid, as per Rules.

The application is disposed of in the above terms.

JUDGE

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