

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

CRIMINAL APPLICATION (BA) NO.117 OF 2023

(Pradip s/o Devrao Gedam Vs. State of Maharashtra and anr.)

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

Court's or Judge's Order

Shri A. Jaltare, Advocate h/f Shri Y.P Bage, Advocate for the
applicant.

Shri M.J. Khan, APP for State.

Ms D.V. Sapkal, Advocate for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JULY 11, 2023.

Heard.

2. Present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.207/2022 registered at police station Shegaon, District Chandrapur for the offence punishable under Sections 376(2)(n) and 376(3) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The applicant is arrested on 20th July 2022. Since then he is in jail. The crime is registered on the basis of report lodged by the victim girl aged about 14 years on an allegation that her parents are not alive. She is residing along with her grandparents. Present applicant is also resident of the same village and they were studying in one school. Prior to two years present applicant has expressed his feelings to her and she consented for the same.

Thereafter present applicant “माझे सोबत प्रेम करते का? असे म्हणाल्याने मी त्यास हो म्हणाली.” Thereafter on 22/02/2022 said applicant called her at his uncle's house which was a vacant premises and promised her for marriage and subjected her for sexual assault against her consent. Thereafter on several occasions she has subjected her for sexual assault, due to which she was pregnant. The child was aborted by her. On the basis of said report, police have registered the crime against the present applicant.

4. As per the contention of the present applicant there was a love affair between him and the victim girl. Said love affair was opposed by her grandparents and subsequently, false FIR is lodged against him. Now, investigation is completed and charge-sheet is filed. His further custody is not required and no purpose will be served by keeping him behind bar.

5. Said application is strongly opposed by the State on the ground that the victim girl was only 14 years of age at the time of incident. Her consent is not relevant. If the applicant/accused is released on bail he will tamper with the prosecution evidence.

6. Learned Counsel for responder No.2 also reiterated the same contentions and opposed the application.

7. Heard learned Counsel for the applicant. He submitted that considering the investigation is completed

and the circumstances that out of love affair, they attracted towards each other and there was a physical relationship which was opposed by the grandparents of the victim, therefore, the crime is registered. Now, investigation is completed. No purpose will be served by keeping the applicant behind bar and hence he be released on bail.

8. Learned Additional Public Prosecutor reiterated the contention and submitted that there is every possibility that the applicant win over the witnesses and the case of the prosecution will be hampered.

9. Learned Counsel for non-applicant No.2 submitted that the victim has already lost her parents and she is residing along with her grandparents. If applicant is released on bail she is having apprehension that the applicant will tamper the prosecution evidence and will pressurize her.

10. Having heard both the sides and on perusal of the recitals of the FIR, it reveals that the victim and the present applicant were acquainted with each other. The applicant has expressed his love feelings to her and she has also consented for the same. It further reveals from the FIR that they were chitchatting with each other. Thus, it is apparent from the FIR that the applicant who is 25 years and the victim attracted towards each other out of the love relationship and there was physical relationship between them out of said love affair. The applicant has

also admitted that there was love affair between him and the victim girl which was opposed by the grandparents of the victim, and therefore, the crime is registered against him. Considering the circumstances in which the alleged incident has taken place shows that being the teenagers they attracted towards each other and had a physical relationship. In catena of decision this Court has held that while considering the bail application in a crime like 376 which is especially arising out of love affair are to be treated differently than the regular matters.

11. Considering now investigation is completed and charge-sheet is filed. No purpose will be served by keeping the present applicant behind bar. However, considering the apprehension raised by the learned Counsel for respondent No.2 some conditions deserves to be imposed on the present applicant. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Pradip s/o Devrao Gedam ~~in the event of arrest~~ in Crime No.207/2022 registered at police station Shegaon, District Chandrapur for the offence punishable under Sections 376(2)(n) and 376(3) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on executing P.R. Bond in the sum of

Deleted as per
Hon'ble Court's
order dated
17.07.2023.

Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of village Kokewada Mankar, Taluka Bhadrawati, District Chandrapur and shall not contact with the victim in any manner.

(iv) The applicant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

(v) The applicant shall attend concerned Police Station as and when required for the investigation purpose.

(vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(URMILA JOSHI-PHALKE, J.)

**Divya*