

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

CRIMINAL APPLICATION (BA) NO.141 OF 2023

Yashwant S/o Indal Ade Vs. State of Maharashtra 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 J.Y. Ghurde, Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant/State.
Shri O.R. Deshpande, Advocate (appointed) for non-applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 11, 2023.

This is an application under Section 439 of the Code of Criminal, 1973.

2. The applicant has been arrested on 21.09.2022 in Crime No.577/2022 registered with Police Station, Mahagaon, District Yavatmal for the offences punishable under Sections 376(2), 376(1) and 109 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act').

3. Having heard both sides and having gone through the material placed before me, it appears that the victim herein was about 11 years old, at the relevant time. Her statement indicates that on 12.09.2022 when she was alone in the house, the applicant called her to his house and has committed penetrative sexual assault upon her and thereafter threatened her to not disclose the incident to anyone. She further states that two days prior to 12.09.2022 co-accused Arun Pawar had called her at the house of the applicant and has committed similar such offence.

4. Learned counsel for the applicant has invited my attention to the report dated 22.09.2022 given by Dr. Ravindra Wadate. The doctor has reported that on 16.09.2022 the victim alongwith mother had been to his hospital. The mother of the victim informed the doctor that since last couple of days the victim is not speaking to anyone. The doctor enquired whether she has been harassed or assaulted. The victim informed him that she had quarrel with her friend. Her mother stated that she has not been subjected to any other assault including sexual assault. The doctor therefore has not examined the victim on the point of sexual assault nor did he give treatment to that effect.

5. It is accordingly argued that the victim or her mother have not made grievance of sexual assault before the Doctor Ravindra Wadte and that no reason has been assigned as to why the said fact has been suppressed from the doctor. He has then invited my attention to the medical report. The report indicates that hymen is intact. On the point of evidence of injuries to the genitals/anus, evidence related to non-penetrative assault the report is completely silent, rather blank. Thus, it is argued that the report would neutralise the case of the prosecution.

6. Learned APP has opposed the application on the ground that the offence is serious.

7. Learned counsel for the applicant submits that though the victim has used the word that applicant and co-accused have committed 'rape' (बलात्कार) and victim being

minor, might not be aware of exact meaning of the aforesaid word. He further submits that the applicant might have committed other offence, which the victim has not properly described.

8. This submission cannot be accepted inasmuch as the investigating officer after having concluding the investigation has blamed the applicant for committing offence of penetrative sexual assault. As such, Section 3 of POCSO Act defines penetrative sexual assault to mean penetration of penis, to any extent, into the vagina, however, the statement of victim indicates otherwise. She does not say that the applicant has made an attempt to commit rape but is categorical in making allegations of rape. That apart, similar such allegation has been made by her against co-accused. In the circumstances, the medical report showing hymen intact will be advantageous to the applicant, at least for the purpose of releasing him on bail. The prosecution will get an opportunity to put forth its version, which ofcourse will be tested by the defence in cross-examination. However, considering the discrepancy mentioned above, further incarceration of the applicant, who is 19 years old, appears to be not necessary.

9. When inquired of antecedents, 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.

10. In view of above and considering the peculiar facts of the case and further considering the nature of evidence against the applicant 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. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

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

12. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Yashwant S/o Indal Ade, be released on bail in Crime No.577/2022 registered with Police Station, Mahagaon, District Yavatmal for the offences punishable under Sections 376(2), 376(1) and 109 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 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 not contact the victim or her mother in any manner.

(iv) 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.

(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 regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vii) The applicants shall maintain law and order.

(viii) 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.

(ix) Professional charges of learned appointed counsel for the non applicant no.2 shall be paid as per the rules.

The application is disposed of in the above terms.

JUDGE

Wagh