

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

...

CRIMINAL APPLICATION (BA) NO. 160/2023

Bhumesh @ Bhushan s/o Radheshyam Mankar .. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Tiroda, Dist.Gondia and another .. Respondents

.....
Mr. D.V.Mahajan, Advocate for the applicant

Mr. S.M.Ghodeswar, APP for Respondent No.1-State

Ms.Mohini A.Sharma, Adv.(appointed) for Respondent No.2
.....

CORAM: ANIL L. PANSARE, J.

DATED : 3rd April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 15.09.2022 in Crime No.993/2022 registered at Police Station Tiroda, Dist.Gondia, for the offences punishable under Sections 307, 354, 354D, 366, 341, 309, 506 of the Indian Penal Code read with Sections 8, 10, and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act").

2. After having heard both sides at length and having gone through the papers, it appears from the statement dated 17.09.2022 of the victim who was 16-years and nine-months old at the relevant point of time, that the applicant and the victim were in relationship.

The parents of the victim came to know about it and, therefore, they asked the victim not to speak with the applicant. The applicant intended to continue the relationship and, therefore, followed her. On 13.09.2022 when the victim was proceeding to her school, the applicant intercepted her and held her right hand and took her near the water tank behind the Hutatma Smarak. At that time, there were no one on the road. The applicant proposed her for marriage and threatened that if she refuses, the applicant will kill her brother. The applicant took out a blade and inflicted an injury on the right side of her neck. The victim snatched the blade. The applicant took another blade and inflicted self-injury on his neck. At that time, the friend of the applicant called him. The applicant narrated the incident to his friend, who arrived at the spot. The victim threw the blade at the spot, so also the applicant. They both were taken to the hospital. The victim stated before the Doctor that she herself has inflicted the injury. She later on changed her version by saying that it is the applicant who inflicted the injury and threatened her. This courage she had gathered after her parents joined.

3. The learned counsel for the applicant contends that the relationship is admitted. The first version of the victim before the Doctor would indicate that the applicant and victim made an attempt to commit suicide. Despite such status, the Investigation Officer has invoked the provisions of Sections 8 and 10 and 12 of the POCSO Act. In this connection, on 27.03. 2023, the following order was passed:-

“ *Heard the matter for some time.*

2. *The learned Counsel for the applicant submits that there are no allegations against the applicant to attract ingredients of*

Sections 8,10 and 12 of the Protection of Children from Sexual Offences Act. Despite such fact, the Investigating Officer, to glorify the allegations, has invoked these provisions. The learned APP to take instruction on this point.

3. *Stand over to 3rd April,2023.*

4. *The Investigating Officer to remain present in the Court on the next date.”*

4. Today, the Investigating Officer is present. The learned APP on instructions submits that the corrective measures will be taken forthwith. As such, the I.O. ought to have been careful before leveling such serious allegations against the applicant without there being any material on record.

5. The learned APP submits that the ingredients of Section 12 of the POCSO Act may be attracted inasmuch the applicant proposed the victim and was also following her.

6. I have gone through the Section 11 of the POCSO Act. The basic ingredients to attract Section 11 is that the act ought to be committed with sexual intent. In the present case, the applicant has followed the victim for the purpose of marrying her. Catching hold of her hand does not appear to be with sexual intent but with an intention to pursue the victim for marriage. *Prima facie*, the act does not fall in the category enumerated in Section 11 of the POCSO Act. So far as Sections 8 and 10 are concerned, Sec. 8 provides for punishment for sexual assault which is not the story of the prosecution and Section 10 provides for punishment for aggravated sexual assault, which also is not the story of the prosecution.

7. What transpires from the above discussion is that the applicant and victim were in relation. The parents were against such relationship. The applicant followed the victim with the proposal of marriage. In doing so, he caught hold of her hand and took her near the Water Bank behind Hutatma Smarak. The statement of the witness is indicative of the fact that the applicant and the victim made an attempt to commit suicide. It is so, because it is quite unlikely for the applicant to carry two blades, as if he was aware that the victim will snatch the first blade. The statement of the victim that when she reached the hospital she narrated another version, does not go well with her conduct when she was assaulted by the applicant. The conduct is such that she snatched the blade from the hands of the applicant and if she could snatch the blade, it is difficult to digest that she got frightened when she went to the hospital and narrated a different version. Be that as it may, the aforesaid fact should be left to the trial Court and the statement of the victim will be examined once she enter the witness box.

8. 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.

9. Considering the peculiar facts of the case and 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 and the attending circumstances, 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.

10. 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.

11. Resultantly, the following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant-Bhumesh @ Bhushan s/o Radheshyam Mankar, be released on bail in Crime No.993/2022 registered with Police Station, Tiroda Dist. Gondia for the offences punishable under Sections 307, 354, 354D, 366, 341, 309, 506 of the Indian Penal Code read with Sections 8, 10, and 12 of the Protection of Children from Sexual Offences Act, 2012, on he executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (iii) The applicant shall not contact the victim or her father 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.
- (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.

(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.

12. Copy of this order be served upon the Superintendent of Police, Gondia, for information and for taking appropriate action for the lapse committed by the Investigating Officer.

13. Professional charges of Ms. Mohini A.Sharma, 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.

[ANIL L. PANSARE, J.]

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