

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

CRIMINAL APPLICATION (BA) NO.170 OF 2023

Chanchal s/o Devidas Gharat

Vs.

State of Maharashtra, through PSO, PS Gadchiroli and another.

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

Court's or Judge's orders.

Ms Kirti Deshpande, h/f Shri R.R. Vyas, Advocate for applicant.
Shri S.M. Ghodeswar, APP for non-applicant no.1/State.
Ms Deepali Sapkal, Advocate appointed for non-applicant no.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JUNE 21, 2023.

The present application is for grant of bail in connection with the Crime No.561/2022 registered with Police Station, Gadchiroli for the offences punishable under Sections 376, 376(2)(j)(n), 506 of the Indian Penal code and Sections 4,6 and 12 of the Protection of Children from Sexual Offences Act and Section 67(B) of the Information Technology Act.

2. The applicant is arrested on 14.08.2022 and since then he is in jail. The crime is registered on the basis of report lodged by the victim on an allegation that when she was taking education in 8th standard, she got acquainted with the present applicant. He used to call her. In the year 2021, when she was studying in 11th standard, the applicant took her in the forest and expressing that he is having love and affection subjected her for sexual assault and also obtained her obscene photographs. She further alleged that

in April, 2022, again the present applicant called her to meet him and threatened her that she has to act according to him otherwise he will make photographs viral. On the basis of said report, the police have registered the crime against the present applicant.

3. As per contention of the present applicant, there was love affair between him and the victim girl. Victim girl at the time of incident was on the verge of the attaining the age of majority and was aware of the consequences. There was no incident of sexual relationship but the victim girl left the parents house on her own and joined applicant's company. Thus, he has not committed any offence. Merely because there was love affair between them and the parents were opposing the said love affair, the false report is lodged at the instance of the parents. Now investigation is completed. Charge-sheet is filed. No purpose will be served by keeping him bar.

4. Said application has strongly opposed by the State on the ground that there are serious allegations against the present applicant as he has obtained obscene photographs of the victim and threatened her to make it viral. Considering the same, if the applicant is released on bail, he will tamper the prosecution evidence and hence, bail application deserves to be dismissed.

5. Heard Ms Kirti Deshpande, learned counsel for the applicant. She submitted that from the statement of the

victim recorded by the learned Magistrate and the father of the victim reveals that there was a love affair between the victim and the accused. The victim was on the verge of the attaining the age of majority. She herself joined the company of the accused and there was no incident of sexual relationship between them. Now, they are willing to marry with each other. Considering the same, the applicant be released on bail. He will abide by all the conditions, which may be imposed by this Court.

6. The said application though strongly opposed by the learned counsel for the non-applicant no.1, Ms Deepali Sapkal, learned counsel for the non-applicant no.2, submitted that now the victim has expressed that she want to marry with the accused and she has already completed age of 18 years. Now they will perform the marriage and therefore considering the same appropriate orders be passed.

7. However, learned APP strongly opposed the application on the ground that there are serious allegations against the applicant. Merely because victim and accused are performing marriage is not sufficient to release the applicant on bail. If the applicant is released on bail, entire prosecution case will be tampered and thus bail application deserves to be rejected.

8. Having heard both sides and on perusal of

investigation papers, the FIR is lodged on the basis of report lodged by victim girl. During investigation, the victim girl was referred for the medical examination. During medical examination, it revealed that the hymen is torn. Thus, there is a prima facie material to show that there was sexual activity by the victim. During investigation, the witnesses were referred for recording their statements under Section 164 of the Code of Criminal Procedure. In the said statement, father of the victim stated before the learned Magistrate that there was love affair between the victim and the accused. Prior to this incident also the victim has left the house, and on the next day, both were produced before the police station and on enquiry the victim has disclosed that she is having love affair with the present applicant. It is further stated that by him that the accused has promised her for marriage and therefore she joined the company of the accused. There are other statements also. During investigation, the investigating officer has seized the mobile phone of the accused and it is referred to the Forensic Lab. The report of the Forensic Lab is yet to be received.

9. From the investigation papers it reveal that there was a love affair between the present applicant and the victim girl. The victim girl was on the verge of attaining the age of majority as she was 17 years and 4 months old at the time of incident. It is observed by this Court and the Hon'ble Apex Court also in the various other matters that wherein the allegations are leveled against the accused regarding sexual

assault out of love affair, said matter can be treated differently. The usual criteria not to be applied in such cases. Apparently it appears that there was love affair between the victim and applicant and out of love affair there was sexual activity between them. Admittedly, consent of the victim is not relevant as she has not attained the age of majority. However, considering the fact that both the applicant and the victim are of teenage and in that teenage they may attract towards each other and out of that said attraction incident could have happened. Now, investigation is completed. Charge-sheet has already filed. Though report of the Forensic Lab is yet to be received, however, considering that there was a love affair and out of such love affair and attraction alleged incident has taken place. No purpose will be served by keeping the present applicant behind bar. He is already in jail since 14.08.2022 i.e. from approximately one year. Considering all above aspects, the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass following order:

ORDER

- i. The application allowed.
- ii. The applicant – Chanchal S/o Devidas Gharat, be released on bail in connection with Crime No.561/2022 registered with Police Station, Gadchiroli for the offences punishable under Sections 376, 376(2)(j)(n), 506 of the Indian Penal code and Sections 4,6 and 12 of

the Protection of Children from Sexual Offences Act and Section 67(B) of the Information Technology Act, on he executing PR bond in the sum of ₹25,000/- with one surety in the like amount.

iii. The applicant shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the alleged crime.

iv. Professional fees of the learned counsel appointed for non-applicant no.2 be quantified and paid, as per Rules.

With this, the application is disposed of.

JUDGE

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