



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

CRIMINAL APPLICATION (BA) NO.173/2023

Vishal s/o Ajay Hagawane

..VS..

**State of Mah., thr.PSO PS Borgaon Manju, Taluka and District Akola and
anr**

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

Court's or Judge's Order

Shri Anil S.Mardikar, Senior Counsel assisted by Shri
V.R.Deshpande, Advocate for the Applicant.
Shri O.R.Deshpande, Counsel for NA No.2.
Shri S.S.Hulke, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 08/12/2023

PRONOUNCED ON : 18/12/2023

1. By this application under Section 439 of the CrPC, the applicant, who is original accused No.2, seeks bail in connection with Crime No.39/2022 registered with the non-applicant/police station for offences punishable under Sections 363, 376, 376(2)(n) (d), and 506 read with 34 of the IPC and under Sections 3(a), 4, 5(g)(I), 6, 11(i)(iv)(v), and 12 of the Protection of Children from Sexual Offences Act, 2012 and under Section 69A and 67B of the Information Technology Act.

2. The applicant is arrested on 1.2.2022 and since then he is behind bars.

3. The FIR is registered against unknown persons on the basis of report lodged by father of victim alleging that on 30.1.2022, at about 8:30 pm, his daughter went out of the house and did not return back to home. He searched her, however she

was not found. During investigation, the victim was found at Jalgaon and her statement is recorded. From her statement, it reveals that the applicant and other co-accused are her maternal uncles by relation. At the time of incident, she was aged about 17 years and was studying in 11th Std. She was residing at Sisa Bodarkhed, post Dongargaon, district Akola and was attending college at Akola. It is alleged that from her village, she used to come at Dongargaon Fata by walk and, thereafter, by auto-rickshaw or any other transport vehicles. In the month of December 2020, she returned at Dongargaon Fata by an auto-rickshaw and proceeding towards her house. At the relevant time, the applicant and other co-accused, who are her cousin maternal uncles, restrained her and dragged her in an agricultural field and subjected her for sexual assault. It is further alleged that when the applicant subjected her for sexual assault, co-accused Sanket had shot photos and taken videos the said incident in his mobile-phone. Subsequently, the applicant and other co-accused, by threatening her that they will publish the said video viral, subjected for her sexual assault on various occasions. On the day, when she left the house, one friend of accused started harassing her and called her and, therefore, she left the house and the village and came to Jalgaon.

4. After the victim was brought back, she was referred to medical examination and the accused along with the applicant were arrested.

5. Learned Senior Counsel Shri Anil S.Mardikar for the applicant, submitted that the entire prosecution story is concocted and there is no corroboration to the story of the victim. Co-accused Sanket has already committed suicide by writing a suicide note wherein he has given a complete blame on himself. The

applicant is not at all involved in the act of the sexual assault. Only to implicate him falsely, the false report is lodged against him. The mobile-phone of the applicant is seized and forwarded to Forensic Science Laboratory. The report received nowhere shows that any obscene videos were found in his mobile-phone. Now, investigation is completed and the chargesheet is filed. The custodial interrogation and further incarceration of the applicant in jail are not required and, therefore, he be released on bail.

6. Learned Additional Public Prosecutor Shri S.S.Hulke for the State, strongly opposed the application on the ground that there is a *prima facie* material against the applicant which is sufficient to show involvement of the applicant in the crime. The victim was found at Bhusawal Railway Station. The police from the Bhusawal recorded her statement wherein she immediately narrated the incident and informed the police authorities at Akola. The mobile-phones of all the accused including the applicant are seized. The applicant was holding mobile-phone of "Vivo" Company and Forensic Science Laboratory Report shows that deleted images and videos were recovered from the mobile-phone of the applicant. The medical examination of the victim corroborates her version. Considering the *prima facie* material and nature of the crime, the application deserves to be rejected.

7. Learned counsel Shri O.R.Deshpande for the victim, endorsed the same contentions and submitted that statement of the victim, statement of police officials at Bhusawal, medical report, and Forensic Science Laboratory Report show involvement of the applicant in the crime. As such, the application deserves to be rejected.

8. Having heard learned counsel appearing for respective

parties and perused the FIR, as well as the statement of the victim, it reveals that the victim in her statement narrated the entire incident. The fact, that the victim left the village and found at Jalgaon, is supported by statements of witness viz. police constables at Bhusawal Railway Station, which show that the victim was found at Bhusawal Railway Station and police constable Bhushan Patil found that she was crying and took her in the office of railway police force and she narrated the incident occurred. Accordingly, the information was forwarded to the Akola Police Station. The victim was also sent. She was medically examined and supported the allegations. The mobile-phone of the applicant, as well as mobile-phones of other co-accused, is seized. From Analysis Report, it reveals that the applicant's mobile-phone (Exhibit-6); Sim Card (Exhibit-6/1), and Memory Card (Exhibit-6/2) were examined and on analysis it reveals that video files and entries of deleted files were ascertained.

9. Thus, there is a *prima facie* material against the applicant to connect him with the alleged incident. Though the investigation is completed and chargesheet is filed, the nature of crime is grievous and heinous in nature. The apprehension raised that if the applicant is released on bail, possibility of he tampering witnesses cannot be ruled out.

10. In the light of the above, the application of the applicant deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)