

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.176 OF 2023

Aniket Sahebrao Shirsat

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Akot File, Akola
and another

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

Court's or Judge's orders

Mr. H. N. Mohta, Counsel for applicant.

Mr. A. M. Kadukar, APP for respondent No.1/State.

Mr. O. R. Deshpande, Appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/07/2023

1. The present application is preferred for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.359/2022 registered with Police Station, Akot File, Akola for the offence punishable under Sections 363, 376(2)(n)(j), 376(3) of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act. The applicant is arrested on 25.10.2022 since then he is in jail.

2. The accusation against the present applicant is that he has promised the minor victim girl for marriage and took her along with him and subjected her for sexual assault. On the basis of the said report, police registered the crime against the present applicant. During the

investigation, the statement of the victim girl was also recorded. She was also referred for the medical examination.

3. As per the contention of the present applicant that the victim girl herself left her parent's house and joined his company. Out of love affair, the alleged incident has taken place. Now, the investigation is completed, charge-sheet is filed and his further custody is not required and, hence, he be released on bail.

4. The said application is strongly opposed by the State on the ground that at the relevant time victim girl was of the very tender age of 14 years, therefore, her consent is not relevant. The applicant has not only taken her but subjected her for sexual assault. Thus, the *prima facie* case is made out against the present applicant, and hence, the bail application deserves to be rejected.

5. The learned appointed Counsel Mr. Deshpande, also reiterated the said contentions and opposed the application.

6. Heard learned Counsel Mr. Mohta for the applicant. He reiterated the contentions and placed reliance on ***Anirudha Radheshyam Yadav Vs. State of Maharashtra*** reported in ***2020 ALL MR (Cri) 1351***. He submitted that the statement of the victim shows that she

at her own accord left her parent's house and joined the company of the present applicant. She roamed along with the present applicant at various places but not made any grievances to anybody. As soon as she asked the present applicant to drop at her home, he immediately brought her back. Thus, the intention of the present applicant is clear from the said act. Now, the investigation is completed, charge-sheet is filed. His further custody is not required. Hence, he be released on bail.

7. The learned APP and learned appointed Counsel vehemently submitted that considering the tender age of the victim girl, the applicant has taken disadvantage of her innocence and subjected her for sexual assault. Her consent is not relevant as at the relevant time the victim girl was of the very tender age of 14 years, within the meaning of Section 2 (d) of the Protection of Children From Sexual Offences Act, 2012 and prays for rejection of the application.

8. Having heard both sides. On perusal of the recitals of the FIR, it reveals that victim girl has left her parent's house at her own accord and joined the company of the present applicant. She stayed along with the present applicant at various places but not made any grievances. Admittedly, the consent of the victim is irrelevant. As far as the allegation regarding the

kidnapping is concerned, the observation of the Hon'ble Apex Court in the case of **S. Varadarajan Vs. State of Madras**, reported in **AIR 1965 SC 942**, is to be taken into consideration wherein it is held that where a minor girl alleged to be taken away by the accused person, had left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined the accused, it could not be said that the accused had taken her away from the keeping of her lawful guardian within the meaning of section 361 of the Indian Penal Code. Something more had to be done in a case of that kind, such as an inducement held out by the accused person or an active participation by him in the formation of the intention either immediately prior to the minor leaving her father protection or at some earlier stage.

9. In the present case, the victim was 14 years of old on the day of incident whereas the applicant was 20 years of old. It appears from the statement of the victim that she had left her parent's house and joined the company of the present applicant thereafter, they travelled from one place to another. As the victim shown her desire not to stay with the present applicant, he bring her back and dropped her at Akola. Thus, *prima facie* the ratio laid down by the Hon'ble Apex Court in the case of **S. Varadarajan** (supra) is applicable in the present case also.

10. As far as the allegation of the sexual assault is concerned, it may be stated that the provisions of law though stringent and to be applied stringently. The conduct of the victim is to be taken into consideration that she had left the parent's house at her own will and she had surrendered to the physical desires of the applicant out of love and affection for him. Admittedly, the consent of the victim is not relevant at this stage. However, considering that now, the investigation is completed, charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar. Hence, the application deserves to be allowed by taking into consideration the peculiar facts of the present case. Accordingly, I proceed to pass the following order.

(i) The application is allowed.

(ii) The applicant Aniket Sahebrao Shirsat is released on bail in connection with Crime No.359/2022 registered with Police Station, Akot File, Akola for the offence punishable under Sections 363, 376(2)(n)(j), 376(3) of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act, on executing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall furnish his cellphone number and address with the address proof.

(6)

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(iv) The applicant shall not induce, threaten or promise any of the witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate