

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

CRIMINAL APPLICATION (BA) NO.182 OF 2023

Amol Gajanan Dhamode Vs. State of Maharashtra, through its PSO, PS
Jalgaon Jamod, Tq. Khamgaon, Dist. Buldhana 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 S.B. Gandhe, Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant no.1/State.
Shri M.V. Rai, Advocate for non-applicant no.2.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 23, 2023.

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

2. The applicant is arrested on 10.01.2023 in Crime No.575/2022 registered with Police Station, Jalgaon Jamod, Tq. Khamgaon, Dist. Buldhana for the offence punishable under Sections 363, 366, 376(2)(J)(N) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3. Having heard both sides and having gone through the material placed before me. It appears that the applicant and victim have willingly eloped and indulged into consensual sexual activities. They eloped on 01.10.2022 and then proceeded to Pune and thereafter to Gujarat. In the meantime, father of the victim had lodged report that his daughter has been kidnapped by the applicant. The applicant and victim themselves, upon learning that victim's

father has sat on hunger strike before the office of Collector, Buldhana, came back to Jalgaon Jamod. The applicant advised the victim to approach police station and narrate the true story. Accordingly, the victim came to police station and narrated the incident.

4. The learned counsel for the applicant submits that the victim has refused to reside with her parents and has been sent to Sakhi Ban Stop Center, NGO. Learned counsel for the victim submits that victim is now willing to stay with her parents.

5. The facts so far narrated indicate that the applicant has not kidnapped the victim nor has he forced himself upon the victim. The only difficult is that the victim being minor her consent is insignificant, but then one cannot ignore the fact that the victim was sexually mature and was aware of consequences of the activities which she has indulged into.

6. This Court in the case of **Sunil Mahadev Patil Vs. the State of Maharashtra** reported in **2016 ALL MR (Cri) 1712** has observed in paragraph 11, which reads as under:

“11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of

sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

7. The present case is no exception but the sessions Court has not considered this aspect. It is nobody's case that the applicant has taken advantage of the victim's age and lured her.

8. The investigation is in progress. Nothing is to be recovered at the instance of or from the applicant. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant.

9. In the peculiar facts and circumstances of the case and considering the fact that the victim herself accompanied

the applicant, as also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view no fruitful purpose will be served by keeping the applicant behind bars. 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 learned trial Judge shall not get influenced with the above observations.

11. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Amol Gajanan Dhamode, be released on bail, in Crime No.575/2022 registered with Police Station, Jalgaon Jamod, Tq. Khamgaon, Dist. Buldhana for the offence punishable under Sections 363, 366, 376(2)(J)(N) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on he furnishing P.R. Bond in the sum of ₹25,000/- with one surety in the like amount.
- (iii) 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 regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(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 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.

The application is disposed of in the above terms.

JUDGE

Wagh