

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

CRIMINAL APPLICATION (BA) NO.225 OF 2023

Sonu s/o Maroti More

Vs.

State of Maharashtra, Through P.S.O. Police Station, Hiwarkhed, Tq. Khamgaon,
District 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 A. S. Mardikar, Senior Counsel a/b Shri Ved R. Deshpande, Counsel for applicant.
Shri A. M. Kadukar, APP for respondent No.1/State.
Mrs. Sonali Saware Gadhave, appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 04/07/2023

1. The present application is preferred for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.126/2022 registered with Police Station, Hiwarkhed for the offence punishable under Sections 376(2) and (3), 376(2)(j)(n) (f), 354-A, C, D, 228-A, 506 read with Section 34 of the Indian Penal Code, Sections 4, 8, 12, 14 and 15 of the Protection of Children From Sexual Offences Act and Sections 67(A)(B) and 66(E) of the Information Technology Act. The applicant is arrested on 27.08.2022 since then he is in jail.

2. The crime is registered on the basis of a report lodged by the victim on an allegation that her father has appointed the applicant as a labour to look

after the cattle and therefore, she got acquainted with the present applicant. When she was alone in the house prior to 7 – 8 months, the applicant visited her house and subjected her for sexual assault. It is further alleged that thereafter, the accused used to communicate with her and insisting her for the sexual relationship. He has also obtained her nude photographs and threatened her that he will circulate the same and will make it viral. On 29.08.2022, she came to know that her photographs were circulated and viral by sending it to the WhatsApp group therefore, she approached to the Police Station and lodged the report. On the basis of said report, crime is registered against the present applicant.

3. As per the contention of the present applicant that there was a consensual relationship between him and the informant. The photographs are not circulated by his mobile or cell phone. He is implicated falsely in the alleged offence. Now, the investigation is completed, charge-sheet is filed and his further custody is not required, and no purpose will be served by keeping him behind bar.

4. The said application is strongly opposed by the State on the ground that the serious allegations are against the present applicant that he has circulated the nude photographs of the informant by circulating the same on the WhatsApp group. The applicant is resident

of Aurangabad District therefore, the possibility cannot be ruled out regarding the absconding as well as there is possibility of tampering the prosecution witnesses and prayed for rejection of the application.

5. The victim has also raised a strong objection on the ground that the applicant has made her photographs viral. There is every possibility that if he is released on bail, he will pressurize her and will tamper the prosecution evidence, hence application deserves to be rejected.

6. Heard learned Senior Counsel Shri Mardikar for the applicant. He submitted that the relationship between the victim and the present applicant was consensual one. The FIR is lodged by her after six months. The allegations are not supported by the medical certificate. The statements of the witnesses show that the photographs are not circulated through the mobile phone of the present applicant. Though the statement of Mahadev Sadashiv More shows that the applicant has obtained his SIM Card, however, he has also not disclosed the said incident immediately. Considering that now the investigation is completed, charge-sheet is filed and further custody of the present applicant is not required. As the applicant is resident of Aurangabad, there is no possibility that he be pressurized the witness. Hence, he be released on bail.

7. The learned APP strongly opposed the said application and reiterated the contention and if the applicant/accused is released on bail, there is every possibility that he will tamper the prosecution evidence and will abscond.

8. The learned appointed Counsel for the victim also raised the objection on the ground that the allegation against the present applicant is of serious in nature and hence bail application deserves to be rejected.

9. After perusal of the investigation papers, it reveals that the victim was 16 years and some months old at the time of the incident. As per her allegations, the alleged incident has taken place prior to 7 – 8 months of lodging of the FIR. She alleged that present applicant subjected her for sexual assault and obtained her nude photographs and threaten her that he will circulate the same. As per the allegation on 19.08.2022, she came to know that her nude photographs were circulated therefore, she approached to the Police Station and lodged the report.

10. The applicant is arrested during the investigation. The Investigating Officer has also recorded the statements of the relevant witnesses. The statement of Mahadev Sadashiv More shows that the applicant has obtained his SIM Card and circulated the said

photographs on the WhatsApp group. The said mobile phone and SIM Card are already seized by the Investigating Officer and forwarded to the Forensic Lab for the scientific opinion. Now, the investigation is completed and charge-sheet is filed. Considering the recitals in FIR, it reveals that the fact was consensual one. Admittedly, the informant who was below 18 years of age *prima facie* it reveals from the birth certificate, therefore, her consent is not relevant. At the same time, it also reveals that she has not immediately disclosed the said incident to anybody and not lodged the report after her photographs were circulated. The statements of the witnesses show that the said nude photographs were not circulated from the cell phone of the present applicant, but it was circulated from the SIM Card of one Mahadev Sadashiv More. Now, the said SIM Card is already seized and forwarded to the Forensic Lab for obtaining the opinion.

11. Learned Senior Counsel Shri Mardikar, placed reliance on ***Anirudha Radheshyam Yadav Vs. State of Maharashtra*** reported in **2020 ALL MR (Cri) 1351** wherein by considering the case of **S. Varadarajan Vs. State of Madras, AIR 1965 SC 942**, this Court has 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. In the case in hand, the applicant has not taken the victim anywhere. The alleged incident has taken place at her house. Admittedly, she has not raised any shouts at the time of the incident. At the most her statement nowhere discloses that she has resisted the act. So far as the offences punishable under the Protection of Children From Sexual Offences Act is concerned, admittedly, the provision as a stringent one, however, there is no prohibition to the Court to trial or refuse the bail in order to secure the ends of justice. The conduct of the victim shows that she has not resisted the act of the present applicant when he entered in her house. As far as the allegation regarding the circulation of the nude photographs is concerned, the scientific report is awaited. Considering the investigation is already completed, the charge-sheet is filed. Further custody of the present applicant is not required. Admittedly, it is not also the case where under the misconception of the fact that the applicant has promised her for marriage the said act has been committed. The recitals of the FIR shows that the informant has consented for the said act as it is already observed that her consent is not relevant being she is below 18 years of age. However, considering the entire scenario wherein the alleged incident has taken place, no purpose will be served by keeping the present applicant

behind bar. As far as scientific evidence is concerned, it is yet to be received and will clarify regarding the offence committed under the Information Technology Act. Considering that, the applicant is not resident of the same village. The apprehension raised by the learned APP and the learned Counsel for the Victim, there is no possibility that the applicant would be in position to tamper the prosecution witness, if some conditions are imposed. Accordingly, I proceed to pass following order.

(i) The application is allowed.

(ii) The applicant Sonu s/o Maroti More is hereby released on bail on executing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.126/2022 registered with Police Station, Hiwarkhed for the offence punishable under Sections 376(2) and (3), 376(2)(j)(n)(f), 354-A, C, D, 228-A, 506 read with Section 34 of the Indian Penal Code, Sections 4, 8, 12, 14 and 15 of the Protection of Children From Sexual Offences Act and Sections 67(A)(B) and 66(E) of the Information Technology Act.

(iii) The applicant shall not enter into the vicinity of Lakhanwada till conclusion of the trial.

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

(8)

35.ba.225.2023

(v) Contravention of any of the conditions will entitle the victim and the State to prefer an appropriate application for cancellation of bail.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate