

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

CRIMINAL APPLICATION (BA) NO. 231 OF 2023

Vishnu Pandit Chavhan

..VS..

State of Maharashtra through Police Station Officer, Police Station Digras, District Yavatmal
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 R.J. Shinde, Advocate for Applicant.
Shri S.S. Doifode, A.P.P. for Non-applicant No.1/State.
Shri A.A. Zade, Advocate for Non-applicant No.2.

CORAM : ANIL L. PANSARE, J.

DATED : MARCH 29, 2023.

1. Heard learned counsel for both the sides.
2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (in short "the Code"). The applicant have been arrested on 30.12.2022 in Crime No. 966/2022 registered with Police Station Digras, Tah. Digras, District Yavatmal for the offence punishable under Sections 363, 366(A), 376(2)(n) of the Indian Penal Code and Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").
3. Briefly stated the prosecution's case is that the applicant has kidnapped a minor girl and has committed multiple sexual intercourse with her. This has been done on the pretext of performing marriage. The minor girl was, at the relevant time, 15 years and 10 months.

4. Thus, it is the case of the applicant that the victim willingly eloped with him and therefore the offence of kidnapping will not be made out. He further submits that the family members of both the sides have arrived at an amicable settlement and have decided, in the presence of respected persons of the village, that once the victim becomes major, the applicant and victim will solemnize marriage. Learned counsel appearing for victim would support the aforesaid contention and has no objection if the applicant is released on bail.

5. Learned A.P.P., however, submits that the subsequent settlement arrived at between two families is irrelevant so also the theory of consent, for the reason that the victim being child as defined under POCSO Act, her consent will be insignificant,.

6. Having considered the rival submissions and having gone through the material placed before me, it appears that the applicant and the victim have had consensual sexual activities. Though, the victim was minor, she was of the age where one may presume that she had attained sexual maturity.

7. In the case of **Sunil Mahadev Patil Vs. The State of Maharashtra**, reported in **2016 ALL MR (Cri) 1712**, this Court has observed in para No.11, which reads thus :

“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.”

8. This case appears to be no exception. Further, the families have taken a decision to find out a way to lead a peaceful life by permitting two innocent souls to continue the journey of their life together. Applicant was 21 years old at the relevant time. It is nobodies case that the applicant has taken advantage of the age of the victim.

9. The charge-sheet has been filed. The charges have not yet been framed. It will take time to commence

and conclude the trial. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long.

10. In view of above and considering the subsequent development so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

11. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

12. Resultantly, following order is passed :

ORDER

(i) The Application is allowed.

(ii) The applicant- Vishnu Pandit Chavhan, be released on bail, in Crime No. 966/2022 registered with Police Station Digras, Tah. Digras, District Yavatmal for the offence punishable under Sections 363, 366(A), 376(2)(n) of the Indian Penal Code and Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 on he furnishing P.R. bond in the sum of Rs. 25,000/- (Rupees twenty five thousand) with one or two sureties 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 mobile number(s) and the residence 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 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 condition, 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.

(ANIL L. PANSARE, J.)