



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

CRIMINAL APPLICATION (BA) NO.252 OF 2023

Santosh Janusing Rathod

Vs.

The State of Maharashtra, through Police Station Officer, Police Station, Bitargaon,
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

Mr. B. T. Parwe, Advocate for applicant.

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

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/08/2023

1. This is an application for grant of bail under Section 439 of the Code of Criminal Procedure.
2. The respondent No.2/victim is not represented by anybody. Learned Counsel Ms. Deepali Sapkal, present before the Court, is appointed to represent the respondent No.2/Victim.
3. The learned Counsel for the applicant to furnish a copy of application along with all documents to the learned appointed Counsel for the respondent No.2/Victim.
4. Place the matter at 2.30 p.m. today.

(URMILA JOSHI-PHALKE, J.)

At 2.30 p.m.

1. The present application is for grant of bail in connection with Crime No.122/2022, registered with Police Station, Bitargaon District Yavatmal for the offences punishable under Sections 376(2)(f), 376(2)(i), 376(2)(j) and 506 of the Indian Penal Code and 4 and 6 of the Protection of Children From Sexual Offences Act, 2012. The applicant is arrested on 04.05.2022 since then he is jail.

2. The accusation against the present applicant is on the basis of report lodged by mother of the victim girl alleging that the victim is 6 years old girl and present applicant is her father. On 02.05.2022 her husband has not attended the work. In the morning, the informant had been to answer nature's call and her husband i.e. applicant was at home. When she returned, her daughter disclosed to her, she is unable to discharge the urinal and blood was oozing from her private part. On inquiry, the victim disclosed that the present applicant has subjected her for sexual assault. On the basis of said report, police have registered the crime against the present applicant.

3. As per the contention of the present applicant, victim is his daughter and he is falsely implicated in the alleged offence merely due to the

matrimonial dispute between him and the informant. Now, the investigation is completed and chargesheet is filed and further custody of the applicant is not required and hence, he be released on bail.

4. The said application is strongly opposed by the State on the ground that the victim is only six years of age and the applicant is the father who has subjected six years old daughter for sexual assault. The victim has sustained the injuries and she was treated for the said injury. Considering the nature of the evidence against the present applicant, a *prima facie* case is made out. The offence is of grievous nature. If the applicant/accused is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

5. Heard learned counsel for the applicant. He reiterated the contentions and submitted that now investigation is completed, no purpose will be served by keeping the present applicant behind bar. In view of that, the applicant be released on bail.

6. The learned APP and the learned appointed Counsel vehemently submitted that six years old girl is subjected for sexual assault by her own father. She has sustained the grievous injuries for which she was treated.

Considering the nature of the offence, the bail application deserves to be rejected.

7. Having heard both the sides and on perusal of the investigation papers. It is apparent that the present applicant is the father of the victim who has subjected the victim for sexual assault is substantiated by the medical certificate which shows that the victim has sustained the injuries on her private part in the nature of abrasion, the hymen was also found tear in 5, 6 O'clock position. The medical certificate further shows that the victim has developed the infection i.e. UTI due to the act of sexual assault and she was treated for the same. A *prima facie* material against the present applicant reveals from the investigation papers. The present applicant who is the father has betrayed the trust of the small girl and subjected her for sexual assault. The apprehension raised by prosecution that if the applicant/accused is released on bail, he will tamper the prosecution evidence cannot be ruled out. Considering the *prima facie* material against the present applicant and the gravity of the offence, the application deserves to be rejected. Accordingly, I proceed to pass following order.

8. The application is rejected.

(URMILA JOSHI-PHALKE, J.)