

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

CRIMINAL APPLICATION (BA) NO.257 OF 2023

Mangesh s/o Ganpat Samarth

Vs.

State of Maharashtra, through PSO, PS Chimur, Dist. Chandrapur 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.C. Jaltare, Advocate for applicant.

Shri M.J. Khan, APP for non-applicant no.1/State.

Ms Deepali Sapkal, Advocate appointed for non-applicant no.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JUNE 21, 2023.

The present application is for grant of bail in connection with the Crime No.159/2022 registered with Police Station, Chimur, District Chandrapur for the offences punishable under Sections 354, 354-A, 323 of the Indian Penal code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of report lodged by the grandfather of the victim on allegation that on 22.05.2022, the victim, who is aged about 5 years, was playing alongwith other two friends at that time the present applicant lifted her and as she resisted kept her on ground. In the evening at about 5:30 pm, when bath was given to her, grandfather noticed abrasion on her chest. On enquiry, she disclosed that said nail-marks are as the applicant has lifted her. On the basis of said report, police have registered

the offence against the present applicant and arrested him.

3. As per contention of the present applicant that no such incident has taken place. Merely because of previous enmity he is implicated falsely. Now the investigation is completed. Charge-sheet is also filed. His further custody is not required and he will not stay in the village, if he is released on bail and therefore, the allegation regarding tampering of the witnesses would not arise.

4. Said application has strongly opposed by the State as well as non-applicant no.2 -victim on the ground that the victim is only five years old. The present applicant with sexual intend outraged her modesty and committed the offence. If he is released on bail, he will temper with the prosecution evidence. Hence, the application deserves to be rejected.

5. Heard learned counsel for the applicant Shri Jaltare. He submitted that the only allegation against the present applicant by the victim girl is that he lifted her and there is no allegation that he subjected her for any type of sexual assault. The statements of the friends of the victim girl are also shows that only act of the present applicant is that he lifted the victim, who is five years of age. It may be out of love and affection. However, now the investigation is completed. The charge-sheet is already filed. No purpose will be served by keeping the applicant behind bars.

6. Learned APP and learned counsel Ms Deepali Sapkal have vehemently submitted that if the applicant/accused is released on bail, he will tamper with the prosecution evidence and hence, the application deserves to be rejected.

7. Having heard both sides and on perusal of investigation papers, the allegation against the present applicant is that he lifted the victim girl from the backside and as victim shouted he immediately kept her on the ground. The statements of the friends of the victim girl also show that the applicant has lifted her. The statement of the grandfather of the victim discloses that while he was giving bath to the victim girl, he noted abrasion marks on her chest. Admittedly there is a prima facie material against the present applicant. However, considering now investigation is completed and charge-sheet is filed, further custody of the applicant is not required. No purpose will be served by keeping him behind the bars. However, considering the apprehension raised by the learned counsel for the non-applicant no.2 and learned APP that there is likelihood of tampering of the case, application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- i. The application allowed.
- ii. The applicant - Mangesh s/o Ganpat Samarth, be released on bail in connection with Crime No.159/2022

registered with Police Station, Chimur, District Chandrapur for the offences punishable under Sections 354, 354-A, 323 of the Indian Penal code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, on he executing PR bond in the sum of ₹25,000/- with one surety in the like amount.

iii. The applicant shall not enter into the vicinity of village of Tekepar, Tehsil Chimur, District Chandrapur, till culmination of the trial.

iv. The applicant shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the alleged crime.

v. Professional fees of the learned counsel appointed for non-applicant no.2 be quantified and paid, as per Rules.

With this, the application is disposed of.

JUDGE

Wagh