

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

CRIMINAL APPLICATION (BA) NO. 258/2023

Sankat s/o Dinkar Askar V/s State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Bhushan Dafle, counsel for applicant.

Mr. M.J.Khan, APP for non-applicant No.1/State.

Mrs. Sonali Saware Gadhave, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 09/08/2023.

1. Heard.
2. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No.630/2022, registered with Police Station Bhadrawati, District Chandrapur, for the offence punishable under Sections 363, 376(2)(N), 376(3), 506 of the Indian Penal Code, 1860 and under Section 4 of the Protection from Children from Sexual Offences Act (for short the POCSO Act).
3. The accusation against the present applicant is that the victim was acquainted with the present applicant, they used to exchange messages with each other on Facebook. On 15/09/2022, the victim had been to her friend's house to attend the

birthday celebrations. The birthday celebrations are over at 9.00 p.m.. She attended to contact her father to take her back at home, however, she could not contact the phone and therefore, she called the present applicant to drop her at home but the present applicant took her at her friend's house and subjected her for sexual assault. On the second day, he dropped her in the school. On 05/12/2022, she again called the present applicant, however, the present applicant took her at his friends house, and again subjected her for sexual assault. On the basis of said report, the police have registered the crime against the present applicant.

4. As per the contention of the present applicant, there was a love affair between him and the victim. Out of the said love affair, the victim herself joined his company, and there was no physical relationship between them. The false allegation is made against them as both were found together, at the instance of the parents of the victim. Now, the investigation is completed and charge-sheet is filed, his further custody is not required and hence, he be released on bail.

5. The said application is strongly opposed by the State on the ground that the victim is only 13 and a half years old, and her consent is not relevant.

Moreover, she nowhere stated that there was a love affair between her and the present applicant. On the contrary from the statement, it reveals that she called the present applicant to drop her at her house but the present applicant took her at his friends house, and subjected her for sexual assault. The present applicant is a grown-up boy and knows the consequences of his act, whereas the victim girl is only 13 and a half years, is not aware about the consequences of the act. Considering the prima-facie material, the application deserves to be rejected.

6. Learned appointed counsel reiterated the same contention and supported the submission that there is a prima-facie material against the present applicant to connect him with the alleged offence, and prays for rejection of the application.

7. Having heard both the sides and on perusal of the investigation papers, the crime is registered on the basis of a report lodged by the victim, who has alleged that there was an acquaintance with the present applicant, they used to exchange the message to each other. On the day of the incident, she has attended the celebration of birthday at her friend's house. The celebration was over at about 9.00 p.m. She tried to contact her father to get

her back at her house but she could not contact him therefore, she called the present applicant and requested him to drop her at her house, but the applicant took her at friend's house and subjected her for sexual assault.

8. During the investigation, the investigating officer has also collected the birth certificate of the victim, which shows that the victim was a minor, at the relevant time. She is medically examined. Her oral report is substantiated by the medical examination which shows the sexual assault on the victim cannot be ruled out. During the investigation, the statements of various witnesses are recorded. As far as the contention of the present applicant that there was a love affair between him, the victim has nowhere stated regarding the said love affair.

9. The present applicant is a grown-up boy of 21 years and fully aware about the consequence of his act, whereas the victim is only 13 and half years old. The enactment of the POCSO Act is to protect children from offences of sexual assault, and sexual harassment, and with intention to protect the children from the said sexual harassment of the said Act is enacted. Considering the facts in the present case, admittedly, no case is made out of the love affair.

Moreover, even if it is considered that victim herself went along with present applicant, her consent is not relevant. There is a prima-facie material against the present applicant to connect him with the alleged offence. Considering the allegations that the present applicant has betrayed the trust of the victim, who has called him to drop her at her house and subjected her for sexual assault. This fact is sufficient to reject his present application.

Therefore, I am not inclined to grant anticipatory bail in the case. Accordingly, I pass the following order:

- a. Criminal application is **rejected**.
- b. Fees of the learned appointed counsel is quantified as per the Rules.

JUDGE