

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

CRIMINAL APPLICATION (BA) NO. 260 OF 2023

Sudhir S/o Madan Prasad Mishra

..VS..

State of Maharashtra through PSO, PS Saoner, Dist. Nagpur 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. S.D. Chande, Advocate for applicant.

Mr. S.M. Ghodeswar, APP for non-applicant No.1/State.

Mr. T.T. Mirza, h/f Ms. S.O. Tapdiya, Advocate for non-applicant
No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JUNE 19, 2023

Present applicant is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.616/2022 registered with Police Station Saoner, District Nagpur for the offence punishable under Sections 376, 376(2)(n), 328 and 506 of the Indian Penal Code.

2. The applicant is arrested on 10.08.2022 and since then he is in jail.

3. The applicant is arrested as crime is registered on the basis of report lodged by the victim on an allegations that on 21.03.2022 she got acquainted with the present applicant. The present applicant has proposed her on 04.04.2022. He called her to celebrate her birthday, she joined his company to celebrate her birthday. It is further

alleged that on 04.06.2022 when she was at her maternal uncle's house, the present applicant insisted her to meet him by threatening her that he is having her photographs and if she comes to meet him, he will show her and he subjected her for sexual assault. On the basis of the said report, the police have registered the offence against the present applicant.

4. As per contention of the present applicant the false report is lodged by the informant as the sister of the present applicant has filed report against the brother of the informant and to give counterblast to the said report, this false report is lodged. In fact, no such incident has taken place. The present applicant is not at all concerned with the alleged offence. Now, the investigation is completed and charge-sheet is filed and further custody of the present applicant is not required. Approximately for one year the applicant is in jail. Considering the only part of the investigation that Forensic Science Laboratory (FSL) Report is yet to be received and CDR Report is to be included in the investigation paper, no other investigation is remained to be carried out. Thus, further custody of the present applicant is not at all required. The applicant is M.B.A. student and he has to pursue his education and prayed for grant of bail.

5. Said application is strongly opposed by the State on the ground that there is *prima facie* material against the present applicant to connect him with the alleged

offence. The statements of the witnesses and the cellphone which is seized from the accused forwarded to FSL Lab which is the material evidence against the present applicant to connect with him in the alleged offence and investigation is yet to be completed, considering the same, the application deserves to be rejected.

6. Heard learned counsel Mr. Chande for the applicant. He reiterated the contention and submitted that considering only investigation as regards to the FSL report which is yet to be received, no other investigation is remained. The present applicant is in jail since last nine to ten months. He further invited my attention towards reply filed by the non-applicant No.2, who has no objection to release the applicant on bail. He submitted that in view of the above said circumstances, the applicant be released on bail.

7. Learned APP, however, strongly objected the application on the ground that the FSL report is yet to be received. If the applicant is released on bail, he will tamper with the prosecution evidence and hence, the bail application deserved to be rejected.

8. Having heard both the sides and perused the investigation papers filed on record. The victim is 24 years of age and as per her allegation by administering her some stupefying substance she was subjected for the

sexual assault. The alleged incident according to her of administering her stupefying substance took place on 04.04.2022 and another incident of threatening the victim took place on 04.06.2022. The last incident of sexual assault narrated by her is on 15.06.2022 and she lodged report on 10.08.2022. During investigation, the Investigating Officer has recorded the relevant statements of the witnesses and the Mobile phone of the present applicant is also seized. Admittedly, the informant is a married women therefore, medical papers showing the tears in the hymen is not much helpful at this stage. It is apparent that the investigation is practically completed, only FSL report is yet to be received.

9. Considering the allegations that the FIR lodged after two months after the alleged incident and the investigation is already completed, further custody of the present applicant for investigation purpose admittedly is not required. Considering the allegations as it is, no purpose will be served by keeping the applicant behind the bar. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Sudhir S/o Madan Prasad Mishra is hereby released on bail in connection with Crime No.616/2022 registered with Police Station

Saoner, District Nagpur for the offence punishable under Sections 376, 376(2)(n), 328 and 506 of the Indian Penal Code in executing PR. bond of Rs.25,000/- with one solvent surety in the like amount.

- (iii) The applicant shall attend the Police Station and when required for the investigation purpose.
 - (iv) the applicant shall furnish his cellphone number and address with the address proof.
 - (v) The applicant shall not induce, threaten and pressurize any witness who are connected with the alleged crime.
10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Kirtak