

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

CRIMINAL APPLICATION (BA) NO.279 OF 2023

Santosh s/o Ramkisan Imle

Vs.

State of Maharashtra through Police Station Officer, Police Station, Paratwada, District
Amravati 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. D. S. Khushlani, Advocate for applicant.

Mr. S. G. Ghodeswar, APP for respondent No.1/State.

Ms. Deepali V. Sapkal, appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 19/07/2023

1. The present application is for grant of bail under Section 439 of Cr. PC. in connection with Crime No.604/2022 registered at Police Station, Paratwada, District Amravati for the offence punishable under Sections 363, 366, 376(3) of the Indian Penal Code and under Section 4 and 12 of the Protection of Children From Sexual Offences Act. The applicant is arrested on 04.09.2022.

2. The crime is registered on the basis of report lodged by the mother of the victim girl on an accusation that on 03.09.2022, she had been to the market and requested the victim to come along with her. The victim has not joined the company. When she returned at home from the market, her daughter was not at home and her

daughter has not returned back. Therefore, she suspected against the present applicant as present applicant used to communicate with her. On the basis of the said report, initially, the crime is registered under Sections 363 and 366 of the Indian Penal Code. During the investigation, the statement of the victim girl was recorded. From the Statement of the victim girl, it is revealed that there was love affair between the victim and the present applicant. On the day of the incident i.e. 03.09.2022 at about 9.00 pm. when she was standing in front of the house, the applicant approached to her and asked her to come along with him and on her denial, he threatened her and therefore, she joined his company. The applicant has taken her at the house of his grandmother where he subjected her for sexual assault and thereafter, he brought her at the Amravati Railway Station to proceed towards Mumbai, but police have accosted them. On the basis of this statement, the crime is registered under Section 376(3) of the Indian Penal Code and under Sections 4 and 12 of the Protection of Children From Sexual Offences Act.

3. As per the contention of the applicant that there was love affair between the victim and him and out of love affair, she joined the company of the present applicant. There was no sexual relationship between them. This false allegation is made against the applicant as the mother of the victim was opposing the said love

affair. Now, the investigation is completed and chargesheet is filed. His further custody is not required and hence, he be released on bail.

4. The learned APP as well as the learned Counsel for respondent No.2 strongly opposed the application on the ground that the victim is only 15 years of age, and her consent is not relevant. There was no love affair between the present applicant and the victim. The present applicant has promised her and also threatened her and therefore, she constrained to join the company of the present applicant and the present applicant subjected her for sexual assault. There is *prima facie* material against the present applicant, hence bail application deserves to be rejected.

5. Heard learned Counsel Mr. Khushlani, for the applicant. He reiterated the contentions and submitted that from the statement of the victim, it reveals that there was a love affair and out of the love affair victim has joined the company of the applicant. The victim has travelled along with the applicant at his grandmother house as well as Amravati, but she has not made any complaint to anybody regarding the threat. She was also referred for medical examination. The medical examination does not support the allegation. Now, the investigation is completed and further custody

of the applicant is not required. He will abide by all the conditions.

6. Having heard both the sides and on perusal of the investigation papers. Earlier, the crime is registered under Sections 363, 366 of the Indian Penal Code. During the investigation, the statement of the victim girl is recorded. From her statement, it reveals that there was a love affair between the victim and the present applicant. As far as her consent is concerned, as the victim is a minor, her consent is not relevant. At the same time, it reveals from the investigation papers that though the victim has travelled along with the present applicant, she has not made any complaint to anybody regarding threats by the present applicant. From her statement, it reveals that there was a love affair between them. Thus, it appears that out of the love affair, they attracted to each other and they roamed together. As far as the sexual assault is concerned, medical certificate is not supported the case of victim regarding the sexual assault as no injury is found on her person, as well as hymen is found intact. The final opinion is not given by the medical officer as the Chemical Analyzer's Report is awaiting. Considering the victim has stated that there was a love affair between her and the applicant, investigation is already completed and no purpose will be served by keeping the present applicant behind bar. The application deserves to be allowed by imposing

certain conditions. Hence, I proceed to pass following order.

- (i) The application is allowed.
- (ii) The applicant **Santosh s/o Ramkisan Imle** is released on bail, in connection with Crime No.604/2022 registered at Police Station, Paratwada, District Amravati for the offence punishable under Sections 363, 366, 376(3) of the Indian Penal Code and under Section 4 and 12 of the Protection of Children From Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.
- (iv) The applicant shall not enter into the vicinity of Paratwada, till conclusion of the trial.
- (v) The applicant shall furnish his cell phone number and address with the address proof.

(URMILA JOSHI-PHALKE, J.)

Sarkate