

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

CRIMINAL APPLICATION (BA) NO. 291/2023

Roshan Raju Chandane .vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms D. Sapkal, Advocate for applicant.

Mr. M. J. Khan, A.P.P. for non applicant no.1-State.

Mrs. Kirti Deshpande, Advocate for non applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 28, 2023.

This is an application under Section 439 of the Criminal Procedure Code, 1973. The applicant has been arrested on 28.12.2022 in Crime No.308/2022, registered with Police Station, Dongaon, District Buldhana, for the offences punishable under Sections 363, 366, 376, 376(2)(i)(n) of the Indian Penal Code, 1860.

2. Heard both sides. I have gone through the material placed before me, particularly statement of the victim. It transpires that the victim was residing with her grandparents at Ghatbori, Taluka Mehkar, District Buldhana. Her parents reside at Nashik. The applicant and victim were having love affair. The grandparents of the victim came to know about it and therefore for some days, the applicant and victim stopped talking to each other. Father of the victim was all set to take the victim to Nashik for further studies. The victim, with an intention to continue relationship with the applicant, made false statement to her father that she has to undergo examination and therefore she cannot come. Thereafter, the victim informed the applicant that she will be taken to Nashik and, therefore, they both should elope. The applicant was reluctant by saying that the victim's relatives may

file complaint with police. The victim assured the applicant that no such complaint will be filed. Thereupon, the applicant consented to elope with victim and accordingly they left on 01.12.2022. They went to Chikhli and then to Sakegaon taluka and thereafter to Pune. They stayed at Pune for 20-25 days. In between, they had sexual intercourse. On 27.12.2022, uncle of applicant called him on phone and asked him to return back, with an assurance that they will be allowed to continue the relationship. Thereafter, they appeared before Buldhana Police Station. The victim was handed over to her parents and the applicant is languishing in jail.

3. Learned counsel for applicant has invited my attention to medical report wherein the doctor has opined as follows:

“No evidence of injury noted over perineal area. Hence, occurrence of sexual intercourse cannot be commented. Final opinion reserved till receipt of FSL.”

3. Accordingly, she contends that as of now there is no evidence of sexual intercourse, though the victim has stated that they indulged into sexual activities. She further submits that it is not the applicant but the victim at whose instance the applicant has left the village.

4. Learned A.P.P. joined by learned counsel for the victim, contend that the victim being child as defined under Section 2(d) of the Protection of Children From Sexual Offences Act, 2012 her consent will be immaterial. Learned A.P.P. further submits that there is no reason why the statement of victim on the point of sexual intercourse should not be believed particularly when in medical report, the finding recorded on this point is reserved till receipt of Forensic Science Laboratory's report. He accordingly, prayed for dismissal of the application.

5. I have given thoughtful consideration to the submissions made by both the sides. On the point of releasing the applicant on bail, I find substance in the submission made by the learned counsel for applicant. The applicant was reluctant to move away from the town. However, at the instance of the victim, the applicant ultimately eloped with her. Another important fact is that the applicant himself has surrendered before the Buldhana police. He is not habitual offender, as submitted by learned counsel for the applicant. It is nobody's case that the applicant has taken advantage of the tender age of the victim or that he has exploited her. In fact, both were teenagers.

6. In this regard, the profitable reference could be made to the order passed by this Court in *Sunil Mahadev Patil Vs. The State of Maharashtra* reported in *2016 ALL MR (Cri) 1712*, wherein in paragraph 11, it is held thus:

“11. Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some

religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

7. The present case appears to be no exception. As stated earlier, the applicant has not taken advantage of tender age of the victim nor has he exploited her. The applicant is 22 years old and has to lead entire life.

8. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

9. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

10. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Roshan Raju Chandane, be released on bail in Crime No.308/2022, registered with Police Station, Dongaon, District Buldhana, for the offences punishable under Sections 363, 366, 376, 376(2)(i)(n) of the Indian Penal Code, 1860, on he executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall not contact the victim in any manner. The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

Professional charges of Mrs. Kirti Deshpande, learned appointed counsel for the non applicant no.2 shall be paid as per the rules.

(Anil L. Pansare, J.)