

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

Corrected as per Court's
order dated 20/07/2023.

CRIMINAL APPLICATION (BA) NO.350 OF 2023
(Nitesh s/o Sanjay Rathod Vs. State of Maharashtra and anr.)

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

Court's or Judge's Order

Shri S.V. Sirpurkar, Advocate for the applicant.
Shri M.J. Khan, APP for State.
Ms D.V. Sapkal, Advocate for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 11, 2023.

Heard.

2. Present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.1062/2022 registered at police station Darwaha, District Yavatmal for the offence punishable under Sections 363, 376, 376(3) 366A and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('the POCSO' Act).

3. The applicant is arrested on 03/12/2022. The crime is registered on the basis of report lodged by the father of the victim girl on an allegation that his daughter who was studying in I.T.I. college left the house to attend the college and not returned back. On the basis of said report, initially crime was registered under Section 363 and 366 of Indian Penal Code. During investigation, the statement of the victim girl was recorded and on the basis

of said statement the crime is registered against the present applicant under Section 376 of the Indian Penal Code.

4. As per the contention of the present applicant that there was love affair between him and the victim. Victim at her own accord left the house of her parents and joined the company of the present applicant. He denied regarding any physical relationship between them. It is the contention of the applicant that now investigation is completed and charge-sheet is filed. No purpose will be served by keeping him behind bar.

5. Said application is strongly opposed by the State on the ground that the victim is a minor within the definition of Child in view of Section 2(d) of the POCSO Act. Therefore, her consent is not relevant. It is further contended that the victim was taken by the accused and subjected her for sexual assault. The medical certificate supports the case of the prosecution. If applicant/accused is released on bail he will tamper the prosecution evidence and prays for rejection of the application.

6. Learned Counsel for non-applicant No.2 also opposed the application on the ground that the victim was subjected for sexual assault by the present applicant against her consent. If applicant is released on bail he will tamper with the prosecution evidence.

7. Heard learned Counsel Shri Sirpurkar for the applicant who invited my attention towards the statements of the victim girl and the land lady wherein the victim girl and the applicant stayed together. He submitted that these statements are sufficient to show that the victim was residing with the present applicant happily. Merely because the said love affair is opposed by the parents, this false report is lodged against the present applicant.

8. Now, the investigation is completed and charge-sheet is filed. No purpose will be served by keeping the present applicant behind bar.

9. Per contra, learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 vehemently submitted that the victim was kidnapped by the present applicant and subjected for sexual assault. There is *prima facie* material against the present applicant regarding the alleged offence. The consent of the victim is not at all relevant. Hence, bail application deserves to be rejected.

10. Learned Additional Public Prosecutor further submitted that the allegation is substantiated by the medical certificate which shows that victim was subjected for sexual assault.

11. Having heard both the sides and on perusal of the recitals of the FIR it reveals that initially the FIR was registered on the basis of report lodged by the father.

During investigation, the statement of the victim was recorded. As per her statement, present applicant has threatened her and took her along with him and subjected her for sexual assault. From the statement it further reveals that they visited several places during her stay with the present applicant. They also stayed in one rented room wherein the applicant has subjected her for sexual assault. The Investigating Officer has also recorded the statement of land lady of Amravati where victim and the present applicant stayed together. From the recitals of the statement of the said land lady it reveals that the victim and present applicant both approached to her for rented room and they informed that they are brother and sister. In the absence of the present applicant the land lady also met the victim but the victim has not made any complaint. From the statement it further reveals that the victim seems to be happy while residing with the present applicant. At this stage, it is difficult to comment whether the sexual assault was by promising her for marriage or it was a forceful sexual assault, it was a matter of evidence. Apparently, at the stage, it reveals that the victim has left her parents house and at her own joined the company of the present applicant. From the recitals of the statement shows that she stayed with the present applicant at Amravati and not made any complaint regarding the forceful sexual assault though she was having an opportunity. At this stage, it is apparent that there was physical relationship between them on account of love

affair between them.

12. Considering the nature in which the crime is committed is to be taken into consideration. Admittedly the cases i.e. sexual assault committed on victim out of love affair is to be treated differently. Now investigation is completed and charge-sheet is filed. No purpose will be served by keeping the present applicant behind bar. In view of that the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

Corrected as per Court's
order dated 20/07/2023.

Correction carried out as
Hon'ble Court's order
dated 18.07.2023.

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(i) The application is allowed.

(ii) The applicant - Nitesh s/o Sanjay Rathod in Crime No.1062/2022 registered at police station Darwha, District Yavatmal for the offence punishable under Sections 363, 376, 376(3) 366A and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on executing PR. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not contact with the victim in any manner.

(iv) The applicant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

(v) The applicant shall attend the trial Court regularly.

(vi) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(URMILA JOSHI-PHALKE, J.)

**Divya*