

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

CRIMINAL APPLICATION (BA) NO.353 OF 2023

Ganraj @ Vikki Kailas Pawar

Vs.

State of Maharashtra through Police Station Officer, Digra, District Yavatmal and
another

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

Court's or Judge's orders

Shri S. V. Sirpurkar, Counsel for applicant.
Shri A. M. Kadukar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/07/2023

1. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.1315/2021 registered with Police Station Digra, District Yavatmal for the offence punishable under Sections 363, 366(A), 376(2)(j)(n) of the Indian Penal Code and Sections 6, 12 of the Protection of Children From Sexual Offences Act, 2012. The applicant is arrested on 23.12.2022 and since then he is in jail.

2. The crime is registered on the basis of a report lodged by father of the victim girl on an allegation that the victim girl who is aged about 16 years has left the house on 29.11.2021 on the pretext of attending the School and not returned back. On the basis of this report, the crime was registered initially, under Section

363 of the Indian Penal Code. He has raised the suspicion against the present applicant and he was suspecting that the present applicant has kidnapped her by promising. On the basis of said report, police have registered the crime. During the investigation, the statement of victim girl was recorded. From her statement, it reveals that she was having love affair with the present applicant and therefore, she at her own accord left the house and join the company of the present applicant and stayed along with him. Her statement further reveals that they stayed like husband and wife and there was sexual relationship between them during the said period.

3. As per the contention of the present applicant that out of love affair, they went together and stayed together. He has not committed any offence merely because the victim girl has left the company of her parents, this false report is lodged against the present applicant. Now, the investigation is completed, charge-sheet is filed and further custody of the applicant is not required. Hence, he be released on bail.

4. The said application is strongly opposed by the learned APP for the State on the ground that the victim is below 18 years of age, her consent is not required. Considering the *prima facie* material is against

the present applicant, the bail application deserves to be rejected.

5. Though the victim is served with the notice she has chosen not to appear before the Court. Sufficient opportunity is already granted to her. She has also engaged the Counsel, but he also remained absent, therefore, the application is proceeded.

6. Heard learned Counsel Shri Sirpurkar for the applicant. He reiterated the contention and stated that the victim was 17 years and 6 months at the time of the alleged incident and was on attaining the age of majority. Out of love affair, she joined the company of the present applicant and they stayed together. Now, the investigation is completed, charge-sheet is filed and further custody of the applicant is not required and prayed for releasing the applicant on bail.

7. The learned APP strongly opposed the application and reiterated the contentions and submitted that if the applicant is released on bail, he will tamper the prosecution evidence. Hence, the bail application deserves to be rejected.

8. Having heard both sides. On perusal of the investigating papers. The statement of the victim shows that she at her own accord left the house of her parents

and joined the company of the present applicant. She stayed with the present applicant as his wife and not made grievances to anybody regarding the forceful sexual assault.

9. As observed by the Hon'ble Apex Court in the case of **S. Varadarajan Vs. State of Madras**, reported in **AIR 1965 SC 942**, wherein the Apex Court has held that where a minor girl alleged to be taken away by the accused person, had left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joined the accused, it could not be said that the accused had taken her away from the keeping of her lawful guardian within the meaning of section 361 of the Indian Penal Code. Something more had to be done in a case of that kind, such as an inducement held out by the accused person or an active participation by him in the formation of the intention either immediately prior to the minor leaving her father protection or at some earlier stage.

10. In the present case in hand, the victim statement shows that she herself has left the house of her parents and joined the company of the applicant. *Prima facie* it is apparent that victim girl who is attaining the age of majority joined the company of the applicant out of love affair. Being the applicant and the victim girl who are 20 years and 17 years respectively are of

teenage and attracted towards each other. Out of the said attraction the alleged incident appears to have been occurred. In the Catena of decision it is held that the cases which arising out of love affairs are to be treated differently. Considering the investigation is now completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar. The application deserves to be allowed, considering the nature of the statement of the victim. Accordingly, I proceed to pass the following order.

(i) The application is allowed.

(ii) The applicant Ganraj @ Vikki Kailas Pawar is released on bail in connection with Crime No.1315/2021 registered with Police Station Digras, District Yavatmal for the offence punishable under Sections 363, 366(A), 376(2)(j) (n) of the Indian Penal Code and Sections 6, 12 of the Protection of Children From Sexual Offences Act, 2012, on executing P.R. 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 witness who are connected with the alleged offence.

(iv) The applicant shall attend the trial Court regularly without seeking any exemption.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)