

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

CRIMINAL APPLICATION (BA) NO.355 OF 2023

Raja @ Imran s/o Altaf Khan

Vs.

The State of Maharashtra, through Police Station Officer, Kalamna 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. Sk. Sabahat Ullah, Counsel for applicant.

Mr. I. J. Damle, APP for respondent No.1/State.

Mrs. Deepali V. Sapkal, Appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/07/2023

1. The present application is preferred by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.470/2022. Initially, the offence was registered under Section 363 of the Indian Penal Code. The applicant is arrested on 19.08.2022 since then he is in jail.

2. The crime is registered on the basis of report lodged by the mother of the victim girl on an allegation that victim is 16 years of age and was studying in 10th Std., at the relevant time. On 15.08.2022, when she returned home from her sister's house, she found that her daughter is not at home therefore, she searched for her and inquired with the relatives, but her daughter was not traceable, therefore she approached to the police and

lodged the report. On the basis of the said report, initially, the crime is registered under Section 363 of the Indian Penal Code.

3. During investigation, the statement of the victim girl was recorded by the investigating agency and after recording her statement, Section 376 of the Indian Penal Code is added. As per the statement of the victim girl, the present applicant has promised her for marriage and asked her to elope along with him, accordingly, she went along with him. On 15.08.2022, the applicant has taken her at various places and thereafter, at his sisters house subjected her for sexual assault. During investigation, she was referred for recording her statement under Section 164 of the Cr. P.C. From the said statement, it reveals that she was threatened by the present applicant and obtained the information regarding the money and jewelry she is having at her house. The applicant asked her to bring the money as well as jewelry and kidnapped her and took her at Chhindwada and subjected her for sexual assault.

4. As per the contention of the present applicant, the victim at her own accord left the house of her parents and joined his company as there was love affair between them, subsequently, the police came and took the victim along with them. Due to the pressure of her mother, this false statement is given by the victim.

Now, the investigation is completed, charge-sheet is filed and his further custody is not required hence, he be released on bail.

5. The said application is strongly opposed by the State on the ground that even assuming that the victim has left the house at her own and joined the company of the applicant, her consent is not relevant as she is below 18 years of age. The applicant by showing her knife and took her along with him subjected her for sexual assault by threatening her. Thus, there is a *prima facie* material against the present applicant.

6. The victim has also opposed the application through the appointed learned Counsel Ms. Deepali Sapkal and raised the ground that if the applicant/accused is released on bail, he will tamper with the prosecution evidence, hence, the bail application deserves to be rejected.

7. Heard learned Counsel for the applicant. He reiterated the contention and submitted that even if the allegations are taken as it is, it is the victim who has left the company of her parents and joined the company of the present applicant, though she travelled with the applicant at various places and not made a complaint about the threatening by the present applicant. The victim joined the company of the present applicant out of

love affair and subsequently, due to the pressure of the parents lodged the false report. Now, the investigation is completed, charge-sheet is filed and further custody of the present applicant is not required and hence, he be released on bail.

8. The learned APP reiterated the contentions that considering the serious nature of the offence, if the applicant/accused is released on bail, he will tamper the prosecution evidence, hence, the bail application deserves to be rejected.

9. The learned appointed Counsel also endorsed the same contention and submitted that if this Court comes to the conclusion that the application deserves to be allowed, some conditions be imposed on the present applicant.

10. Having heard both sides and on perusal of the recitals of the FIR, it reveals that FIR is lodged on the basis that victim girl is not found in the house when informant returned from her sisters house. Initially, the crime was registered under Section 363 of the Indian Penal Code. During the investigation, the victim's statement was recorded. From her initial statement, it reveals that she herself has left the house of her parent's and joined the company of the present applicant/accused, as the accused has promised her for

marriage. Thereafter, police came in search of her and took her along with them. Her statement under 164 of the Cr.P.C. was recorded by the Magistrate, wherein she has narrated that present applicant has threatened her by showing the knife and took her along with him and he also enquired with her about the financial conditions and asked her to bring the money from the house, accordingly, she has carried Rs.1,20,000/- from the house and joined the company of the present applicant. It is further alleged that the present applicant by threatening her subjected for sexual assault. Admittedly, in her initial statement, she has not narrated that the present applicant has threatened her by showing the knife and took her along with him. It appears from the statement that as both were having love affair and therefore, attracted towards each other and the victim has left the house at her own.

11. Considering the allegations that applicant has shown her knife, though she has travelled by public transport and was having opportunity not to make any complaint to anybody. Now, the investigation is completed, charge-sheet is filed. Thus, his further custody is not required. As far as the apprehension regarding the tampering of the witnesses is concerned, some conditions can be imposed on the present applicant. No purpose will be served by keeping the present applicant behind bar. Considering the nature of

the allegations, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

- (i) The application is allowed.
- (ii) The applicant **Raja @ Imran s/o Altaf Khan** is released on bail in Crime No.470/2022 registered with Police Station, Kalamna Nagpur, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the area Balaji Nagar, old Kamptee Road, Kalamna, Nagpur, till the conclusion of the trial.
- (iv) The applicant shall not contact, induce, threat or promise any of the witnesses who are connected with the alleged crime.
- (v) The applicant shall furnish his cellphone number and address with address proof.
- (vi) The fees of the learned appointed Counsel for the respondent No.2 be quantified as per the rules.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)