

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

CRIMINAL APPLICATION (BA) NO.373 OF 2023

Abdul Salam S/o Mustafa Sheikh Vs. State of Maharashtra 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 A.S. Quershi, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant no.1/State.
Ms Mohini Sharma, Advocate appointed for non-applicant no.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JULY 21, 2023.

The application is preferred by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.671/2022 registered with Police Station, Gittikhadan, Nagpur for the offence punishable under Sections 363, 354 read with Section 34 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act. The applicant is arrested on 12.11.2022 and since then he is in jail.

2. The accusation against the present applicant is that on 11.11.2022 the victim reached Nagpur at about 7.30 pm and was searching for an auto-rickshaw at that time one driver of the auto-rickshaw approached her and she sat in the said auto-rickshaw. One person was already sitting in the said auto-rickshaw, thereafter, the said auto-rickshaw was halted near another auto-rickshaw and she got down from the first auto-rickshaw and sat in the other auto-rickshaw.

Thereafter, she was taken to an isolated place and was subjected to sexual assault and sexual harassment by the co-accused. On the basis of said report, the police have registered the crime against the present applicant and other co-accused.

3. As per the contention of the present applicant, the only role of the present applicant is that he was the auto-rickshaw driver. He was not present at the alleged spot of the incident. Now the investigation is completed and charge-sheet is filed. His further custody is not required.

4. The said application is strongly opposed by the State on the ground that the present applicant is the auto-rickshaw driver, who dropped the victim near another auto-rickshaw. He was sharing common intention with the other co-accused. Thereafter, the other co-accused took the victim at isolated place and she was subjected to sexual assault. Thus, prima facie involvement of the present applicant is revealed in the sexual assault of the victim. Though the investigation is completed if the present applicant is released on bail he will tamper with the prosecution evidence and would not be available for trial, therefore, prays for rejection of the bail.

5. Heard learned counsel for the applicant and learned APP for the State. Perused the investigation papers. Admittedly, the investigation is completed and the charge-sheet is already filed. As far as the allegation against the

present applicant is concerned, he approached the victim when she reached Nagpur from Balaghat. The victim sat in the auto-rickshaw that time one person was already sitting in the said auto-rickshaw. There was some discussion between the said person and the auto-rickshaw driver. Thereafter, the auto-rickshaw driver dropped her near another auto-rickshaw at Shatabdi Chowk and she was asked to sit in the said auto-rickshaw. Thereafter, the second auto-rickshaw driver and the other co-accused took her at isolated place and subjected her to sexual assault. Thus, prima facie, the involvement of the present applicant is revealed as far as his connection with the other co-accused is concerned. All the accused were sharing a common intention. However, considering the allegations and the role of the present applicant is that he has brought her near another auto-rickshaw and asked her to sit in the other auto-rickshaw. Thus, there is an abetment at the hands of the present applicant. Now, the investigation is completed charge-sheet has already been filed further custody of the present applicant is not required and no purpose will be served by keeping him behind bars. Considering the role of the present applicant, bail application deserves to be allowed by imposing certain conditions. In view of that, I proceed to pass the following order:

ORDER

- i. The Criminal Application is allowed.

- ii. The applicant – Abdul Salam S/o Mustafa Shiekh, be released on bail in connection with Crime No.671/2022 registered with Police Station, Gittikhadan, Nagpur for the offence punishable under Sections 363, 354 read with Section 34 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of ₹25,000/- with one surety in the like amount.
- iii. The applicant shall attend the Gittikhadan Police Station, Nagpur once in a week i.e. on every Sunday between 10.00 am to 01.00 pm, till culmination of the trial.
- iv. The applicant shall furnish the cellphone number and address with address proof.
- v. The applicants shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.
- vi. The professional fees of learned counsel appointed for non-applicant no.2 be quantified and paid, as per Rules.

With this, the application is disposed of.

JUDGE

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