

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

CRIMINAL APPLICATION (BA) NO. 378/2023

Premdas @ Banti Hiranman Humane V/s State of Maharashtra and another.

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

Court's or Judge's Order

Mr N.J. Patil, counsel for the applicant

Mr I.J.Damle, APP for the non-applicant No.1.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 26/06/2023.

1. Heard.
2. Present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 1041/2022 registered at Police Station Darwah, District Yavatmal for the offences punishable under Sections 363, 366(a), 376(2) (n) and 109 of the Indian Penal Code (for short 'the Code') read with Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'). The applicant is arrested on 25/12/2022 since then, he is in jail.
3. The crime is registered on the basis of report lodged by the father of the victim girl on an allegation that his daughter- victim girl is aged about

17 years and 5 months and was studying in Mungasaji Maharaj Vidhyalay, Darwah, Yavatmal in the first year of B.A. On 22/11/2022, his younger daughter had been to native place at Karkheda but the victim girl has not come along with her. On 23/11/2022, his daughter not returned home, therefore, he inquired and it reveal to him that, his daughter is missing. On the basis of said report, the Police have registered the crime. Initially the offence under Sections 363 and 366 of the Code. In the said report, the informant raised suspicion against the present applicant and alleged that the present applicant has kidnapped her on promise.

4. During investigation, the investigating officer carried out the search of the victim girl and she found after one month. Her statement was recorded, wherein she has alleged that present accused has promised her for marriage, and on the promise of her marriage, she was subjected for sexual assault. She was referred for medical examination and after completion of investigation, charge-sheet was filed against the present applicant.

5. As per the contention of the present applicant there was love affair between him and victim girl. Victim girl was on the verge of attaining the majority.

As applicant belongs to the different caste, their love affair is opposed by the parents of the victim girl therefore, they left the village. The applicant on her own accord joined his company. There is no incident of sexual relationship between them. Now, investigation is completed and charge-sheet is filed, no purpose will be served by keeping him behind bar. Hence, he be released on bail.

6. The said application is strongly opposed by the State on the ground that the present applicant has kidnapped the victim girl, on the promise of marriage and he also threatened her. Though investigation is completed, however, considering that there is every likelihood of tampering the witnesses, bail application deserves to be rejected.

The victim girl is also served with notice. She filed her reply through post. She has opposed the application on the ground that there is appreciation by tampering the witnesses hence bail application deserves to be rejected.

7. Heard learned counsel for the applicant. He reiterated the contentions and submitted that from the statement of the victim also, it reveals that there was love affair between him and the victim girl. She at her own accord left her parents house and joined

his company, there was no incident of sexual relationship between them. They roamed at various places. The victim stayed along with him for more than one month and not lodged the report, which is sufficient to show that she at her own accord came along with present applicant, only because, the applicant is from different caste. This report is lodged as the parents of the victim were opposing their love affair. Now investigation is completed and charge-sheet is filed, no purpose will be served by keeping the applicant in jail.

8. Learned APP strongly opposed the said application and vehemently submitted that victim stayed along with applicant for more than one month. She was taken by the applicant on the false promise of marriage and by threatening her that if she restrained to join his company, he will commit suicide. Though investigation is completed but there is apprehension that if applicant is released on bail, he will tamper the prosecution evidence. The victim girl has also raised some apprehension, considering the same criminal application be rejected.

9. Having heard both sides and perusal of the investigation papers, it reveals that there was a love affair between the victim girl and the present

applicant, admittedly, the victim was minor. From the investigation papers and from the statement of the witnesses, it reveals that victim stayed with the applicant for more than one month and they roamed at various places by the public transportation. She never made her grievances to anybody that the present applicant by threatening her and taken her along with him, though she is having an opportunity.

10. Moreover, it is apparent that out of love affair, she joined the company of the present applicant. As far as the sexual relationship or the allegation of the sexual assault is concerned, it is apparent that, it is out come of the love relationship between them. In several matters, this Court has held that the bail applications in respect of the crimes which are registered out of love affair are concerned, the usual considerations are not to be taken into consideration. Here the young boy and girl, who fell in love affair with each other and out of physical attractions, there was sexual relationship between them. Therefore, the said allegations are to be treated differently. Now, the investigation is already completed and charge sheet is filed, no purpose will be served by keeping the applicant behind bar, the application deserves to be allowed by imposing certain condition conditions. Accordingly, I proceed to pass following order:

- a) Criminal Application is allowed.
- b) The applicant is released on bail in connection with Crime No. 1041/2022 registered at Police Station Darwah, District Yavatmal for the offences punishable under Sections 363, 366(a), 376(2) (n) and 109 of the Indian Penal Code (for short 'the Code') read with Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- c) The applicant shall not enter in the village Karkheda, Tah. Ner, District Yavatmal till conclusion of the trial.
- d) 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.
- e) The applicant shall attend the trial Court regularly and shall co-operate with the Court to dispose of the trial as earlier.

- f) The learned trial Court shall not influence by the observation made by this Court while deciding the present application.

JUDGE