

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

CRIMINAL APPLICATION (BA) NO. 425/2023

Sk. Sumer Sk. Ismail 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. Anil Mardikar, Senior counsel with Mr N.B. Kalwaghe, counsel for applicant.

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

Mr. N.R.Tekade, counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 09/08/2023.

1. Heard.
2. The present application is for grant of bail under section 439 of the Code of Criminal Procedure, 1973, in connection with crime No. 498/2021 registered at Police Station, Chikhali, Tah. Chikhali, District Buldhana, for the offences punishable under Sections 363, 366-A, 376, 376(d), 120-B, 109 of the Indian Penal Code read with Sections 4, 8 and 12 of the Prevention of Children from Sexual Offences Act. The accused is arrested on 29/12/2022 since then he is in jail.
3. The accusations against the present applicant is on the basis of a report lodged by the victim, on an allegation that she is the sister of the wife of the present applicant and residing at Chikhali with her parents. On 20/08/2021, the victim who was

along with her parents, the applicant came to their house and assured her that on her birthday he will purchase a new dress for her. He took her along with him and purchased some dresses for her and thereafter, took her in one Darga and subjected for sexual assault. The said incident has taken place in a white colour car. It is further alleged that he has also extended the death threat to her and also to her sister. He has also obtained obscene photographs. On the basis of said report, the police have registered the crime against the present applicant.

4. As per the contention of the present applicant with the false allegation, he is implicated in the alleged offence. The story narrated by the prosecutrix itself is in probable. It is not supported either by the medical certificate or any other material. Now the investigation is completed. During the investigation, when the application for bail was pending before the trial Court, the prosecutrix has withdrawn her allegations and stated that out of misunderstanding, she withdrawing the said report. Considering the same, now further custody of the present applicant is not required and hence he be released on bail.

5. The said application is strongly opposed by the State on the ground that the victim was a child at the time of the incident. There is prima-facie material in her statement. Though the investigation is completed, however, there is apprehension that if he is released on bail, he will tamper the prosecution evidence.

6. Heard learned Senior counsel Mr Anil Mardikar for the applicant. He reiterated the contentions and submitted that the story narrated by the prosecution itself is improbable and unacceptable as she has stated that the alleged incident has taken place in the car. The search of the said car was carried out by the Investigating Officer, and no incriminating articles were found in the said car. There are no external injuries present on the person of the prosecutrix. The medical certificate is also silent regarding the sexual assault on the victim. In view of that considering the investigation is completed and charge-sheet is filed, further custody of the present applicant is not required, and hence he be released on bail.

7. Learned APP reiterated the contentions and submitted that at this stage, the contention of the victim that she has lodged the report out of anger.

There is material evidence against the present applicant which shows that there were injuries on the person of the victim. So, prima-facie material is against the present applicant to show involvement, hence bail application deserves to be rejected.

8. Learned counsel Mr. N.R.Tekade for the informant has no objection for releasing the present applicant on bail.

9. Having heard Mr Anil Mardikar, learned Senior Counsel and learned APP. Perused the investigation papers. As far as the allegation is concerned, it is alleged that the present applicant who is a brother-in-law of the prosecutrix, subjected her for sexual assault. As far as the injuries are concerned, injuries are on left-hand neck and for chest, the medical certificate also shows that there is minimal injury was on the fourchette also, so the contentions of the present prosecutrix is supported by the medical certificate which shows the injuries on the person of the injured.

10. Learned Senior Counsel placed reliance on the order of this Court at Principal Seat in the case ***Bhau Baban Ladhane @ Bhau Baban Ladane Vs State of Maharashtra in bail application 10/2023***, wherein this Court has considered that victim has no objection

and released the applicant on bail. He further placed reliance on *Baban Jabar Khan v/s State of Maharashtra*, wherein also this aspect that the victim has no objection is considered and released the applicant on bail.

11. As far as the present case is concerned, the allegation of sexual assault, admittedly substantiated by the medical certificate. There is a close relationship between the victim and the present applicant. Subsequently, the present applicant, though withdrawn her allegations, her no objection cannot be considered. As far as the merit of the present application is concerned, now the investigation is completed and the charge sheet is filed, no purpose will be served by keeping the present applicant behind bar. Considering the allegations and apprehension raised by the learned APP that there is every likelihood of tampering the witnesses, some conditions deserves to be imposed by the present applicant.

In view of that, I proceed to pass the following order.

- a. Criminal Application is allowed.
- b. The applicant in connection with crime No. 498/2021 registered at Police Station,

Chikhali, Tah. Chikhali, District Buldhana, for the offences punishable under Sections 363, 366-A, 376, 376(d), 120-B, 109 of the Indian Penal Code read with Sections 4, 8 and 12 of the Prevention of Children from Sexual Offences Act, is released on bail, on executing P.R.Bond of Rs. 25,000/- with one solvent surety of the like amount.

- c. The applicant shall not visit the house of the victim and shall not contact her parents in any manner, till the conclusion of the trial.
- d. The applicant shall not induce, threat or promise any witness, who are connected with the alleged crime.

Criminal Application is **disposed of**.

JUDGE