

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

CRIMINAL APPLICATION (BA) NO.481 OF 2023

Shankar Ramesh Ghode 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.P. Sharma, Advocate for applicant.
Shri M.J. Khan, APP for non-applicant no.1/State.
Ms Hemlata S. Dhande, 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.290/2021 registered with Police Station, Ladkhed, Taluka Darwaha, District Yavatmal for the offence punishable under Sections 363, 366A, 376(2) (i)(j) of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act. The applicant is arrested on 06.12.2022 and since then he is in jail.

2. The crime is registered on the basis of report lodged by the father of the victim on an allegation that on 18.07.2022 his daughter left the home when he was in the agriculture field and not returned back. He searched for her but she was not traced and therefore he lodged the report against the unknown person on an allegation that somebody has kidnapped his daughter by promising. On the basis of

said report, initially, crime was registered under Sections 363 and 366 of the IPC. During the investigation, the victim was searched and her statement was recorded. From the statement of the victim, it reveals that the victim is below 18 years of age and she left the house and joined the company of the present applicant as there is a love affair between them. Thereafter, they traveled to Pune and from Pune to Darwha. There was a physical relationship between them during the said period. After her statement was recorded, a crime is registered against the present applicant under Section 376(2)(i) of the IPC.

3. As per the contention of the present applicant, there was a love affair between the victim and him. Out of said love affair, she joined the company of the applicant and there was a physical relationship between them out of the said love affair. Thus, he has not committed any offence. Now the investigation is completed and charge-sheet is filed. His further custody is not required and hence he be released on bail.

4. The said application is strongly opposed by the State on the ground that the victim is below 18 years of age, her consent is not relevant. There was a promise of marriage. Thus, consent was obtained under the misconception and subjected to sexual assault. Considering the gravity of the offence, the application deserves to be rejected.

5. Heard learned counsel for the applicant. He reiterated the contentions.

6. Heard learned APP and learned counsel for the non-applicant no.2/victim also. Perused the investigation papers. Admittedly, the crime is registered initially against an unknown person. During the investigation, the statement of the victim was recorded and it revealed that there was love affair between the present applicant and the victim. Out of the love affair, she left her house on her own and joined the company of the present applicant. It further appears that she roamed alongwith the applicant at several places by public transport and no grievance is made by her that she was subjected to sexual assault by force by the present applicant. It is apparent that there was a physical relationship between them out of attraction. Now and then in various pronouncements, it is held by this Court that the cases which are arising out of love affairs are to be considered differently by lowering the age of the girl for consent. Considering the peculiar facts of the present case that the applicant and the victim came together out of a love affair. The case is not that the applicant has subjected the victim to sexual assault out of lust. Therefore, considering the facts of the present case, the 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 – Shankar Ramesh Ghode, be released on bail in connection with Crime No.290/2021 registered

with Police Station, Ladheda, Taluka Darwaha, District Yavatmal for the offence punishable under Sections 363, 366A, 376(2)(i)(j) of the Indian Penal Code and under Sections 4 and 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 furnish the cellphone number and address with address proof.

iv. The applicants shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

v. 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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