

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

CRIMINAL APPLICATION (BA) NO.486 OF 2023

Nitin s/o Sanjay Chauhan
Vs.

State of Maharashtra through Police Station Officer, Police Station, Mahagaon, District
Yavatmal 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. S. G. Varshani, Advocate for applicant.
Mr. S. M. Ghodeswar, APP for respondent No.1/State.
Ms. S. V. Dhawas, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/08/2023

1. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.698/2022 registered with Police Station Mahagaon, District Yavatmal for the offences punishable under Sections 363, 366, 366-A, 376(2)(n), 109 read with Section 34 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act. The applicant is arrested on 15.11.2022.

2. Initially, the crime is registered on the basis of report lodged by the father of the victim on an allegation that on 16.11.2022 when he woke up in the morning, he found that his daughter is not in the house. He was searched for her but victim is not traced

therefore, he suspected that the present applicant has kidnapped her. On the basis of the said report, initially crime was registered against the present applicant under Section 363 of the Indian Penal Code.

3. During investigation, the victim was found along with the present applicant and her statement was recorded. On the basis of her statement, it reveals that she was subjected for sexual assault on the promise of marriage, therefore the crime is registered under Section 376(2)(n) of IPC and under Section 4 of the Protection of Children From Sexual Offences Act.

4. As per the contention of the present applicant, out of love affair victim and he went at Panvel and stayed there as husband and wife. Out of the said love affair, they attracted towards each other. However, there was no physical relationship between them. Now, the investigation is completed and chargesheet is filed. Considering the same, he be released on bail.

5. The said application is strongly opposed by the State as well as the learned Counsel for the victim on the ground that the allegation against the present applicants are of serious in nature. He has subjected the victim who is minor for forceful sexual assault. The family members of the applicant have threatened the victim and her family members, if he is released on bail

he will tamper the prosecution evidence and prays for rejection of the application.

6. Heard learned Counsel Mr. Varshani for the applicant, learned APP for the State and learned counsel for the respondent No.2/victim. On perusal of the investigation papers, from the statement of the victim it reveals that there was a love affair between the victim and the present applicant. Out of the love affair, she joined the company of the present applicant and stayed along with him at Panvel. From the statement of the witnesses from Panvel, it reveals that victim was staying along with the present applicant and they were residing as husband and wife. It further reveals from the statement that victim was happy with the present applicant when she was residing with him. It further reveals that there were no restrictions on the victim and she was able to move from one place to another. However, she has not made any grievances to anybody regarding forceful sexual assault on her. Admittedly, in her Section 164 of CrP.C. statement, she alleged that she was subjected for sexual assault. However, considering her earlier statement before the police and the statement of the neighbouring witnesses where she residing sufficiently states that victim was residing along with the present applicant out of love affair. The possibility that due to the love affair both are attracted towards each other and had physical relationship cannot be ruled out.

However, considering the investigation is completed and chargesheet is filed, 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 **Nitin s/o Sanjay Chauhan** is released on bail in Crime No.698/2022 registered with Police Station, Mahagaon, District Yavatmal for the offences punishable under Sections 363, 366, 366-A, 376(2)(n), 109 read with Section 34 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not stay in a village Karajkhed, Taluka Mahagaon, District Yavatmal, till disposal of the trial.
- (iv) The applicant shall not in any manner contact or communicate to the victim till the trial is disposed of.
- (v) The applicant shall not induce, threat or promise any witnesses who are connected with the alleged crime.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)