



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

Criminal Application [BA] No.572 of 2023

Chetan s/o Kisanrao Adhe

vs.

The State of Maharashtra, through PSO Dahihanda, District Akola and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Vijaykumar Paliwal, Advocate for the Applicant.
Mr. A.M. Kadukar, A.P.P. for Non-Applicant No.1/State.
Ms. Deepali Sapkal, Advocate for Non-Applicant No.2/Victim.

CORAM : M.W. CHANDWANI, J.
DATE : 30th AUGUST, 2023.

Heard the learned Counsel for the applicant as well as the learned A.P.P. for the State.

02] The applicant seeks to enlarge on regular bail in Crime No.27/2023 registered by Police Station Dahihanda, District Akola for the offence punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code read with Sections 3(a), 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

03] The victim girl aged about 16 years was residing with her father and mother at Village Kinkhed. On 23/01/2023 at about 07:00 a.m., the victim had eloped with the applicant as there was love affair between them. They had gone to Aurangabad and then had gone to Shirdi and resided in a Temple at Village Kadas. It is the prosecution that the applicant established sexual relations with the victim after they eloped and even, prior to leaving their house. There was sexual relationship between the applicant and the victim.

04] Perusal of the record goes to show that the victim was aged about 16 years on the day of alleged incident. From her statement recorded under Section 164 of the Code of Criminal Procedure, it shows that earlier, she had herself insisted the applicant to elope with her, but the applicant was not ready. It appears, that on the day of incident, she had voluntarily accompanied the applicant as, according to her, there was love affair between her and the applicant.

05] The learned A.P.P. for the State submits that the victim is minor, therefore, the consent of the victim is immaterial.

06] Indisputably, the victim girl is less than 18 years of age and was a child on the day of the alleged incident. However, looking to her age and conduct, it can be seen that she was aware of the nature and consequences of her act. Thus, *prima facie* there is no element of compelling the victim by force to have sexual intercourse, which can be attributed to the applicant. There is also no allegation of use of force or violence on the part of the applicant.

07] Insofar as Sections 363 and 366 of the Indian Penal Code are concerned, reliance is placed by the learned Counsel for the applicant on the decision of the Supreme Court in the case of **S. Varadarajan vs. State of Madras – AIR 1965 SC 942.** The investigation is complete and charge-sheet is filed. The applicant is in custody since 11th February, 2023.

08] The learned Counsel appearing for the non-applicant No.2/ victim submits that if the applicant is released on bail, in that eventuality he should be restricted to keep away himself from the victim and from entering in the village Kinkhed.

09] Considering the aforesaid facts, I think discretion of bail on stringent conditions can be exercised in favour of the applicant. Hence, the order :

- (I) The applicant be released on bail in Crime No.27/2023 registered by Police Station Dahihanda, District Akola on his furnishing a P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount before the trial Court.
- (II) The applicant shall undertake to remain present before the learned Special Judge during the course of trial.
- (III) He shall not tamper the prosecution evidence/witnesses.
- (IV) He shall not enter in village Kinkhed.
- (V) The observations herein above are of *prima facie* in nature and, therefore, the Special Judge shall not be influenced by the same during trial.
- (VI) The Secretary to High Court Legal Services Sub-Committee, Nagpur to quantify the professional fees of the learned Counsel, who is appointed to represent the victim, and release the same as per rules.
- (VII) The application is allowed and disposed of in the aforestated terms.

JUDGE