



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CRIMINAL APPLICATION (BA) NO.578 OF 2023

Tikaram S/o Sovinda Munneshwar 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 V.S. Mishra, Advocate for applicant.
Shri M.J. Khan, APP for non-applicant no.1/State.
Ms Falguni Badani, Advocate appointed for non-applicant no.2.

CORAM : M.W. CHANDWANI, J.
DATE : SEPTEMBER 25, 2023.

The applicant seeks bail in connection with Crime No.251/2022 registered with Police Station Duggipar, District Gondia for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The prosecution allegation are that the minor victim girl aged about 17 years came the contact with co-accused – Uttam Kapgate and he took her in Navegaonbandh Forest on his motorcycle and forcibly committed sexual intercourse with her. Till April 2022, he committed sexual inter with her repeatedly. Later on, the victim came to know that she is pregnant. Thereafter, co-accused – Uttam Kapgate blocked her mobile number. It is also the case of the prosecution that the applicant, who was residing beside the house of the victim girl had given handloan of Rs.500/- to her mother, which were not returned by mother of the victim within time. One day he called the victim girl and forcibly established physical relation with her on the ground that he

will not take back money from her mother. Thereafter, the applicant used to call the victim girl and committed penetrative sexual assault frequently. On the complaint of the victim girl, the aforesaid offence came to be registered against the applicant and the co-accused – Uttam Kapgate.

3. It is contended on behalf of the learned counsel for the applicant that the applicant has been falsely implicated in crime and it is the co-accused, who was in relationship with the victim girl and is responsible for her pregnancy. It is submitted that the samples for DNA test of the applicant and co-accused – Uttam Kapgate have been taken at the same time therefore there is doubt about genuineness of DNA report. According to him, the co-accused is already released on bail therefore on the ground of parity the applicant shall be released on bail.

4. Per contra, learned APP vehemently submits that DNA report suggests that applicant is a biological father of the child born to the victim girl. According to him, this clearly establishes that the victim was subjected to penetrative sexual assault by the present applicant. He further submits that the ground of parity will not be applicable in this case because DNA report of co-accused came to be negative and therefore this Court had granted bail to him.

5. Bare perusal of the charge-sheet shows that the victim girl delivered a child. It appears that blood samples of the applicant and the child were taken for DNA testing. In DNA report, the applicant is shown as a biological father of the said child born to the victim. Thus, I find substance in the

argument of learned APP that there is material to suggest that the applicant committed penetrative sexual assault on the victim girl, who was minor at the relevant time. No doubt the Identification Form shows that the blood samples of the applicant and co-accused taken at 11.15 am on 09.11.2022 that does not necessarily suggest that procedure for collecting the blood was not proper. On this there may be answers from the witnesses during the course of trial. As on today, the DNA report specifically suggests that the applicant, who is aged 62 years old, is a biological father of the child born to the victim girl, who is 17 years old. There are allegation of penetrative sexual assault on the minor girl against the applicant, who is a senior citizen, which is heinous crime.

6. Relying on DNA report this Court released the co-accused on bail. In this fact of the case the parity is not applicable in this case.

7. Considering the above aspect, no case is made out for exercising discretionary relief in favour of the applicant. Hence, the application is rejected.

8. Professional fees of learned appointed counsel be quantified and paid as per Rules.

JUDGE

Wagh