

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

CRIMINAL APPLICATION (BA) NO.588 OF 2023
(Barun s/o Bijendra Mandal Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.M. Daga, Advocate for the applicant.
Shri A.M. Kadukar, APP for the State.
Ms F. Badani, Advocate for non-applicant No.2.

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

Heard.

2. Present application is for grant of bail filed under Section 439 of the Code of Criminal Procedure in connection with Crime No.89 of 2023 registered at police station Chamorshi District Gadchiroli for the offence punishable under Sections 376(2)(j), 341 and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offence Act, 2012.

3. The applicant is arrested on 13th March, 2023. Since then he is in jail.

4. The accusation against the present applicant is that on 28th February, 2023 the victim along with one lady Shipra Mandal had gone to the house of the accused for attending some ceremony. At about 1:00 p.m. when victim girl was alone in the house, the applicant came from the backside and subjected her for forceful sexual

assault. Thereafter he had also obtained the videography of the said incident and shown to her. Due to fear the victim went to the house of the applicant at late night and asked him to hand over his mobile phone. Accordingly, the applicant has handed over his mobile phone and thereafter she has deleted the video recorded by the applicant. Thereafter she left the village and went at the house of one Shubham and subsequently, on 12th March, 2023 she lodged the report. As per her contention, she has not narrated the incident to the said Shubham also. On the basis of said report, police have registered the crime against the present applicant.

5. As per the contention of the present applicant that he is implicated falsely in the alleged offence. In fact, the various statements given by the victim before the Police as well as before the Magistrate which shows that the story narrated by the victim is completely improbable and unacceptable. There is no consistency in the statement. Now investigation is completed and charge-sheet is filed. The further custody of the present applicant is not required. Considering the nature of the material no purpose will be served by keeping him behind bar.

6. Said application is strongly opposed by the State on the ground that the victim is a minor. As far as the medical examination is concerned which shows that she was subjected for sexual assault. Though there are contradictory statements however, considering the age of

the victim as she was under the apprehension, and therefore, she has not narrated the incident to anybody. If the applicant is released on bail he will tamper with the prosecution evidence.

7. Heard learned Counsel for the applicant and learned Additional Public Prosecutor for the State and learned Counsel for the victim.

8. Perused the investigation papers. As per the recitals of the FIR, alleged incident has taken place on 28th February, 2023. Thereafter on 12th March, 2023, she has lodged the report about the incident. It further reveals from the recitals of the FIR that after the incident she herself has obtained the mobile phone from the present applicant and deleted the said video from the mobile phone of the applicant. The statement of the victim is recorded under Section 164 of the Code of Criminal Procedure wherein she has given contradictory statements that when she obtained the mobile phone of the present applicant, she searched for the said Video in the mobile phone of the applicant but it was not found in the said mobile phone. Her statement further reveals that after the incident, she called one Shubham whose full name she is not aware about and she went at his house but she has not narrated any incident to him. It further reveals from the statement that thereafter she came into contact with the police on 3rd March, 2023 but she has not narrated the incident to the police also. Subsequently, on 12th March,

2023, she approached to the police and lodged the report. She was referred for the medical examination. She was medically examined and old hymen tear is found which was healed.

9. Admittedly, the victim was examined after 13 days of the incident. Considering the nature of the statements, inconsistent statements are given by the victim regarding the alleged incident. Now investigation is completed and charge-sheet is filed. I am not inclined to make any comment on the nature of the statements at the stage, however, considering that investigation is completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar. Hence, 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 - Barun s/o Bijendra Mandal in Crime No.89 of 2023 registered at police station Chamorshi District Gadchiroli for the offence punishable under Sections 376(2)(j), 341 and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offence Act, 2012, be released on bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(iv) The applicant shall furnish his Cell-phone number and address along with the address proof before the Investigating Officer.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*