



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

CRIMINAL APPLICATION (BA) NO.621 OF 2023

(Vandeo s/o Tarachand Rathod Vs. The 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

Mr. A.A. Gupta, Advocate for the applicant.
Ms Charlewar, APP for the State.
Ms A.P. Murrey, Advocate (appointed) for R.No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 12, 2023.

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.758/2022, registered with Police Station Pusad (Rural), District Yavatmal for the offence punishable under Sections 363, 366, 376(2)(n) and 201 of the Indian Penal Code and under Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

3. The applicant is arrested on 27/12/2022. Since then he is behind bar.

4. Learned Counsel for the applicant submitted that the accusation against the present applicant is that on 09/12/2022 when the informant was sleeping in his house and woke up at about 1.30 a.m. he could not find his grand-daughter in his house. Therefore, he searched for her but she was not traced, and therefore, he approached to the police station and lodged the report

that some unknown person has kidnapped his granddaughter. On the basis of said report, police have registered the crime against the unknown person.

5. During the investigation, the Investigating Officer has searched the victim. She was found along with the accused and her statement was recorded. From her statement, it revealed that the victim is born on 12/09/2008 and was studying in 9th standard, aged about 14 years. She got acquaintance with the present applicant and love relationship was developed between them. She was communicating with him. On 10/12/2022, when her parents were in the house and were sleeping, she called the present applicant and present applicant was outside the house, she went along with him. They stayed at Pune. It is further alleged that during her stay with the present applicant, he subjected her for sexual assault. On the basis of said statement, the crime is registered under Section 376(2)(n) of the IPC as well as Section 4 of the POCSO Act.

6. Learned Counsel for the applicant submitted that considering the statement of the victim as it is, the victim has left her house at her own and out of love relationship she joined the company of the present applicant.

7. Now, investigation is completed and charge-sheet is filed. The applicant is behind bar since the date of his arrest i.e. 27/12/2022. Considering the investigation is completed. Now, further incarceration of

the present applicant is not required and no purpose would be served by keeping the present applicant behind bar. Taking into consideration the circumstance in which the alleged incident has taken place.

8. Said application is strongly opposed by the State on the ground that the victim is only 14 years of age. Her consent is not relevant and if applicant/accused is released on bail he will tamper with the prosecution evidence.

9. Learned Counsel for the victim also raised the strong objection and endorsed the same contentions and prays for rejection of the application.

10. Having heard learned Counsel for the parties. Perused the investigation papers. From the investigation papers there is no dispute that the victim girl was below 18 years of age at the time of incident. As far as the recitals of the FIR is concerned which is lodged against the unknown person and from which it reveals that during the intervening night of 09/12/2022 to 10/12/2022, when informant woke up he found that his grand-daughter is not in his house and after due search he could not traced her, therefore, he approached to the police station.

11. During the investigation, the Investigating Officer has searched the victim and recorded her statement. From her statement, it reveals that out of love affair, she joined the company of the present applicant and stayed along with him approximately for 16 days.

From her statement, it nowhere stated that on the promise of marriage or by forceful sexual assault was committed by the present applicant.

12. The medical examination is also carried out. No external injuries are found on the person of the victim. Thus, it is crystal clear that though the victim is 14 years of age and her consent is not relevant, she joined the company of the present applicant at her own by calling him from the mobile phone and went along with him. As far as the forceful sexual intercourse is concerned, it reveals that out of love affair there is a physical relationship between both. Now, the investigation is completed and the charge-sheet is filed. Only apprehension raised by the prosecution is that there is likelihood of tampering of the witnesses which can be taken care of by imposing certain conditions. In view of that the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant – Vandeo s/o Tarachand Rathod in connection with Crime No.758/2022, registered with Police Station Pusad (Rural), District Yavatmal for the offence punishable under Sections 363, 366, 376(2)(n) and 201 of the Indian Penal Code and Section 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012, be

released on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not contact with the victim, in any manner and shall not enter into the vicinity where the victim is residing i.e. village Lakhi, Tahsil Pusad, District Yavatmal, till the conclusion of the trial.

(iv) The applicant shall attend concerned police station as and when called by the Investigating Officer for the investigation purpose.

(v) The applicant shall furnish his Cell phone number and address with address proof.

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

13. The application is disposed of.

14. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)