



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

CRIMINAL APPLICATION BA) NO.674/2023

Tushar s/o Ramesh Kudmate @ Kulmethe Vs. State of Maharashtra & 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.N. Nandeshwar, Advocate for applicant.
Mr. S.W.Ghodewar, APP for non-applicant/State.
Mr. A.M. Chaudhari, Advocate for non-applicant no.2.

CORAM : M.W. CHANDWANI, J.
DATED : 01/09/2023

1. The applicant seeks bail in Crime No.65/2023 for offence punishable under Sections 376(3), 376 (j), 376 (2)(l), 323, 506 of the Indian Penal Code and Sections 4, 5 (3)(k), 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned counsel for the applicant as well as learned APP for the State assisted by Mr. Chaudhari, learned counsel appearing on behalf of prosecutrix. Perused the charge-sheet.

3. It appears from FIR that on 4.2.2023 when prosecutrix was returning to her home after attending school, the applicant came on the motor-cycle and gave lift to the prosecutrix. He took near construction of bus stop and parked his vehicle. He took the prosecutrix nearby place and assaulted prosecutrix and forcibly committed sexual intercourse on her. Thereafter prosecutrix by taking lift of another motor-cycle came back near bus-stop and went home. On 8.2.2023, when her grandmother noticed swelling on the cheek of prosecutrix, she enquired from her and she narrated the incident to her. Thereafter the matter was reported to the Police Station, Butibori on the

complaint of the prosecutrix. The aforesaid offence came to be registered against the applicant.

4. At the first blush, it appears that the case in hand is forcibly rape and solitary incident.

5. The learned counsel for the applicant took me through the medical report, which was prepared after examining the victim girl. It appears that the history was narrated by the victim girl to the examining doctor wherein she had narrated the incident notably while narrating the incident, she stated that the applicant has penetrated rather sexual intercourse and previously 4-5 times also which is not mentioned in the FIR.

6. Considering the fact that there were sexual intercourse on the victim girl 3-4 times with the applicant prior to alleged incident. The possibility of consensual sex intercourse cannot be ruled out at this stage. No doubt, the consent of minor girl below 18 years is not consent but, the fact remains that considering the age of the victim, who is aged about 15 years was able to understand the nature and consequence of the alleged act. If narrated incident stated in the medical report is to be believed then she did not inform any incident to any of the family member, which according to her, the incident alleged in the FIR and even if thereafter again she accompanied with the applicant on his motor-cycle on 4.2.2023. All these show another angle of the story.

7. Considering the age of the applicant and the age of the victim and considering the above discussed fact, coupled with the fact that investigation is

over and charge-sheet is already filed, I think discretion of bail can be exercised in favour of the applicant on certain conditions.

8. The application is allowed.
9. The applicant shall be released on bail on executing PR bond of Rs. 50,000/- (Rs. Fifty thousand) with one solvent surety in the like amount.
10. The applicant shall not enter within jurisdiction of police station in which the prosecutrix resides.

Application stands disposed of.

(M.W. CHANDWANI, J.)