

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

CRIMINAL APPLICATION (BA) NO. 1065 OF 2022

SHIVENDRA SUSHIL PATEL

VS

STATE OF MAH. THR. PSO, PS. MIDC, NAGPUR.(CRIME NO.697/2021) 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. S. M. Bhangde, Advocate for applicant.
Mr. N. R. Rode, APP for respondent No.1. State.
Ms.Kirti Deshpande,(appointed) Advocate for respondent
No.2.

CORAM : ANIL L. PANSARE J.

DATE : 19/01/2023

Heard.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 18/12/2021 in Crime No.697/2021, registered with Police Station, MIDC, Nagpur for the offence punishable under Sections 376(2)(n), 376D, 372, 392, 323, 506 read with 34 of the Indian Penal Code (IPC) and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), so also under Sections 4 and 5 of the Immortal Traffic (Prevention) Act, 1959.

3. There are in all eight accused persons, namely, (1) Akash Bhandari, (2) Ajay Surankar, (3) Sandip Pandhre, (4) Jamal and three unknown persons. It is the case of the prosecution that Akash was in relationship with the prosecutrix, who was at the relevant time 16 years and 08 months old. The allegation is that Akash taking advantage of relationship committed sexual intercourse and also instigated prosecutrix to have physical relationship with his friends Ajay and Sandip. It appears that Akash assured payment of money to the prosecutrix for such act, but did not pay. It further appears that Jamal was also involved in relationship with prosecutrix and committed sexual intercourse. On the date of incident i.e. on 08/10/2021, while Akash and prosecutrix were coming back on motorcycle, three unknown persons i.e. accused Nos.5 – Harshal Thakre, accused No.6 – Ajay Matre and 7– Shivendra Patel(present applicant) have intercepted the motorcycle and these three persons beat Akash and snatched his mobile and have allegedly committed rape on the prosecutrix.

4. The learned counsel for the applicant submits that applicant is not the one who has committed the crime. He has invited my attention to the FIR, wherein the allegations have been made

against three unknown persons. He then submits that the applicant was never put to Test Identification Parade (T.I.Parade) and that no one has identified him till date.

5. There is no justification coming from the prosecution on this point, however, learned APP and learned counsel for the victim have opposed the application on the count that trial has began and that the relatives of the accused persons have pressurized the victim, through her mother.

6. Additional affidavit to that effect has been filed today. It is taken on record and marked as 'A' for identification. Perusal of the same, however, shows that no specific role has been assigned to the relatives of the applicant, nor is there any blame on the applicant. In the circumstances, when the applicant was not put to T.I.Parade, it is highly challenging for the prosecution to prove his complexity with the crime.

7. Thus, what transpires is that first four accused were known to the victim. The other unknown persons have committed rape on victim. No one has identified the present applicant. He was even not subjected to T.I.Parade. Thus, there is

hardly any evidence against the applicant. In any case, on the basis of such evidence, the personal liberty of persons like applicant cannot be compromised. The evidence is such as would justify the principle that 'the person accused of a crime is considered innocent until proven guilty.'

8. On inquiry, learned counsel for the applicant submits that there are no criminal antecedents against the applicant. He is residing with his father in owned immovable property. Thus, there are strong roots in the locality. The apprehension put forth by learned prosecution can be dealt with by putting the applicant to appropriate terms.

9. On the point of threat to witnesses, the victim and her mother is at liberty to apply to the trial Court for protection under the Maharashtra Witness Protection and Security Act, 2017. The Investigation Officer is also under the obligation to take appropriate steps to protect the witnesses in terms of provisions of the said Act.

10. Resultantly following order is passed :-

ORDER

(i) The application is allowed.

(ii) Applicant – **Shivendra Sushil Patel**, be released on bail, in Crime No.697/2021, registered with Police Station, MIDC, Nagpur City, District Nagpur for an offence punishable under Sections 376(2)(n), 376D, 372, 392, 323, 506 read with 34 of the Indian Penal Code (IPC) and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), so also under Sections 4 and 5 of the Immortal Traffic (Prevention) Act, 1959, on he furnishing PR. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall not leave the territory of Nagpur without prior permission of the Court, till the trial is over.

(vii) The applicant shall maintain law and order.

(viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

JUDGE