



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

CRIMINAL APPLICATION (ABA) NO. 534 OF 2023

Rana Nawab Riyaz Ahmad

.Vs.

The State of Maharashtra, through PSO, Rajapeth PS, Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr Parvez Mubarak Khan, Advocate for the applicant
Mr. Alap Palshikar, APP for the State.'
Mr S.T. Harkare, Advocate for the non-applicant No.2.

CORAM : G.A. SANAP, J.

DATE : 20/10/ 2023.

Heard finally with the consent of learned
Advocates for the parties.

2. The applicant/accused has made this application for anticipatory bail in Crime No.521/2023 registered with Rajapeth Police Station Amravati District Amravati for the offences punishable under Sections 376(2)(n), 506-B and Section 323 of the Indian Penal Code (for short 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

3. Learned Advocate for the accused/applicant submitted that he has been falsely implicated in this case. He further submitted that even if First Information Report is considered, at its face value, it would show that it was consensual relationship between two adults which was not based upon any promise and continued in a hidden manner. Learned Advocate submitted that when the mother of the victim came to know about this incident the victim was pressurized to lodge the false report against the accused/applicant. Learned Advocate submitted that victim on the date of the alleged offence was major and therefore, the issue of consensual relationship would assume significance. Learned Advocate submitted that in the facts and circumstances the accused/applicant is entitled for protection from arrest.

4. Learned APP submitted that for the purpose of investigation, the custodial interrogation of the accused is necessary. Learned APP submitted that on the date of the first incident i.e.24.11.2022 the victim was 17 years 10 months and 28 days old. Learned APP submitted that therefore, the defence of consensual relationship, as sought to be canvased, is not available to the accused.

Learned APP submitted that medical examination report of the victim indicates that she was subjected to aggravated form of sexual assault. Learned APP submitted that if anticipatory bail is granted to the accused, then in this serious crime, the purpose of investigation would be frustrated. Learned APP therefore opposed the bail application.

5. Learned Advocate appearing for non-applicant No.2 adopted the submissions advanced by learned APP for the State.

6. Perused the record and proceedings. The birth certificate of the victim is part of the case diary. It is apparent that on the date of incident i.e. 24.11.2022 the victim was minor. This evidence has to be considered at its face value at this stage. If it is considered, it would show that the victim on the date of penetrative sexual assault, i.e. on 24.11.2022, was minor. In my view, keeping this fundamental aspect in mind the contention of the accused has to be appreciated.

7. On perusal of the medical examination report of the victim it is seen that Medical Officer has opined that

she was subjected to sexual assault. The victim in the report has narrated the first hand account of the incident. It is the case of the prosecution that first sexual assault was committed in the house of one Jaya. The statement of Jaya has been recorded. Jaya, on material part of the incident has supported the statement of the victim. In this case, considering the serious nature of the crime and the fact that victim was minor on the date of first incident, on the basis of defence of consensual relationship, the protection cannot be granted to the accused. In such serious matter, custodial interrogation is always necessary to take the investigation to its logical conclusion. Denial of an opportunity to Investigating Officer to conduct free and fair investigation may frustrate the very purpose of registration of crime. In the facts and circumstances, I am not satisfied with the submissions advanced by learned Advocate for the accused/applicant.

8. Accordingly the application is dismissed.

(G. A. SANAP, J.)