



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

CRIMINAL APPLICATION (BA) NO.820 OF 2023

Avinash s/o Santosh Jadhao

Vs.

State of Maharashtra, Through its Police Station Officer, Barshitakli District Akola and
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. V. Sirpurkar, Advocate for applicant.

Mr. N. R. Rode, APP for respondent No.1/State.

Mrs. Shilpa P. Giratkar (Giripunje), appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18/12/2023

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.19/2023 registered with Police Station, Barshitakli, District Akola for the offence punishable under Sections 363, 376, 376 (2)(n), 376(3) of the Indian Penal Code and Sections 3(d)/4 and 5(n)/6 of the Protection of Children from Sexual Offences Act. The applicant is arrested on 14.01.2023.

2. As per the allegation, the FIR is lodged on the basis of report by the father of the victim on an allegation that on 11.01.2023, he came from agricultural field and went to sleep. At about 12.30 a.m., as he has to visit his agricultural field for watering the crop, he woke up and saw that his daughter is not in the house. He searched for her but could not trace and therefore,

he lodged the report. On the basis of this report, police have registered the crime initially under Section 363 of the Indian Penal Code. During the investigation, the Investigating Officer has searched the victim. She was found and her statement was recorded. It is alleged by her that she got acquaintance with the present applicant in March 2022 and she was communicating with him. On 10.01.2023 as it was her birthday present applicant wished her and asked her to come at his house to celebrate her birthday. She alleged that on 11.01.2023 at about 10.00 p.m. she received the phone call and he called her and came outside the house and took her on his motorcycle at his house and subjected her for sexual assault. It is alleged by her that as she insisted him to communicate with her parents to perform the marriage, he denied for the same and dropped her at her house. On the basis of the said statement the offence under Section 376 of the Indian Penal Code is added.

3. Learned Counsel Mr. Sirpurkar for the applicant submitted that as far as the allegations are concerned, which are false in nature and not supported by the medical certificate. The investigating agency has not collected any documents to ascertain that she is below 18 years of age at the time of incident. He further submitted that history narrated by her before the Medical Officer shows that she at her own joined the company of the present applicant and there is no material to show that there was any physical relationship

between them. No injuries are found on her person. Now, investigation is completed and charge-sheet is filed and further incarceration of the present applicant is not required and prays for releasing him on bail.

4. Learned APP strongly opposed the application on the ground that victim is only 15 years of age. Her consent is not relevant. The applicant took her on the pretext of celebrating birthday and subjected her for sexual assault. Considering the nature of the allegation, offence is of serious nature and prays for rejection of the application.

5. Having heard the learned Counsel for the applicant, learned APP for the State and learned appointed Counsel Mrs. Shilpa P. Giratkar (Giripunje) for the respondent No.2 - victim. Perused the investigation papers. From the recitals of the FIR, it shows that the informant has witnessed in the midnight that victim is not at home and on taking search, she could not found. Subsequently, after two days victim returned home and her statement was recorded. From her statement, it reveals that there was previous acquaintance between her and the present applicant. It further reveals that the applicant called her for celebrating the birthday and without informing anybody she left the house in the midnight and joined the company of the present applicant. As far as the history narrated by her before the Medical Officer is concerned, which shows that she herself left the house and joined the company of the

present applicant. It seems that there was a previous communication between them and out of physical attraction they come together and there was physical relationship between them. Admittedly, the injuries are not found on the person of the victim. On genital examination it revealed that the internal organs are shown to be normal. Now, considering the investigation is completed and charge-sheet is filed and the circumstances under which the alleged incident has taken place, further incarceration of the present applicant is not required. However, considering the apprehension raised by the learned APP, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Avinash s/o Santosh Jadhao** be released on bail in connection with Crime No.19/2023 registered with Police Station, Barshitakli, District Akola for the offence punishable under Sections 363, 376, 376 (2)(n), 376(3) of the Indian Penal Code and Sections 3(d)/4 and 5(n)/6 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the vicinity of village Kajaleshwar, Taluka

Barshitakali, District Akola, till conclusion of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

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

(URMILA JOSHI-PHALKE, J.)