

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

CRIMINAL APPLICATION (BA) NO.1241 OF 2022

Prem alias Pawan s/o Sanjay Zoye (Patil) Vs. State of Maharashtra and another

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

Court's or Judge's orders.

Shri M.V. Rai, Advocate for applicant.
 Shri I.J. Damle, APP for non-applicant no.1/State.
 Ms Kirti Deshpande, Advocate appointed for non-applicant
 no.2.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 08, 2023.

This is an application under Section 439 of the Code of
 Criminal Procedure.

2. The applicant has been arrested on 23.04.2022 in Crime No.0204/2022 registered with Police Station, Jalgaon (Jamod), District Buldhana for the offence punishable under Section 363, 366, 376, 376(2)(n) and 376(3) of the Indian Penal Code (for short, 'IPC') and under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

3. Having heard both sides and having gone through the statement of victims 'x' & 'y' (page nos.83 and 90 respectively), it appears that the applicant was in relationship with victim - y and the friend of the applicant namely Manoj Shigote (co-accused) was in relationship with victim-x who is cousin sister of the victim. Both the victims were minor at the

relevant time, one was 14 years 11 months old and another was 13 years 11 months old.

4. For the purpose of solemnizing marriage, they all eloped from their houses in four-wheeler. They went to Wadgaongad on 11.04.2022 and on 12.04.2022, they proceeded to Nandura and then to Burhanpur and Richedi. Thereafter, on next day, they went to Indor and stayed there in rented room having partition. The applicant and his friend (co-accused) indulged into physical relationship with respective victim partners.

5. In the meantime, it appears that missing report was lodged and that during investigation police managed to reach the applicant and the victims on 22.04.2022. The victims were handed over to their parents. The applicant and his friend are languishing in jail.

6. The statement of victim is indicative of the fact that the sexual intercourse was consensual.

7. Learned APP and learned counsel for the victim argued that both being child as defined under the POCSO Act the consent is insignificant.

8. True it is that the consent is insignificant but then the applicant is also young and was 19 years old at the relevant time. It is nobody's case that the applicant has taken advantage of age of the victim and exploited her. He intent to marry

victim. It appears from the FIR that the parents were against the marriage for the reason that the victims were minors and taking education. Thus, the desire to get married was expressed before the parents of the victims. The fact however remains that the four persons eloped willingly. As stated earlier there are no allegations against the applicant that he has taken advantage of the age of the victim. The applicant is not the habitual offender.

9. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant is staying since long at the address given in the application.

10. In the circumstances and considering the peculiar facts of the case so also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view no fruitful purpose will be served by keeping the applicant behind bars. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

11. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

12. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Prem alias Pawan S/o Sanjay Zoye (Patil), be released on bail, in Crime No.0204/2022 registered with Police Station, Jalgaon (Jamod), District Buldhana for the offence punishable under Section 363, 366, 376, 376(2)(n) and 376(3) of the Indian Penal Code and under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on he furnishing P.R. Bond in the sum of ₹25,000/- with one surety in the like amount.
- (iii) The applicant shall not contact the victims or their relatives in any manner.
- (iv) 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 same till the final disposal of the case.
- (v) 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.
- (vi) 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.

(vii) The applicant shall maintain law and order.

(vii) 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.

(viii) The professional fees of the learned counsel appointed for non-applicant no.2/victim be quantified and paid, as per Rules.

The application is disposed of in the above terms.

JUDGE

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