

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

CRIMINAL APPLICATION (BA) NO.1278/2022

Mangal s/o Bharat Rathod .vs. State of Maharashtra through its PSO P.S.
Umerkhed, Tq. Umerkhed, Dist. Yavatmal and anr.

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

Court's or Judge's orders

Mr. S. M. Lodha, Advocate for applicant.
Mr. N. R. Rode, A.P.P. for non applicant no1.-State.
Mr. P. Vairagade, Advocate for non applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 5, 2023.

Learned counsel for applicant submits that the present application has been filed on the ground that by the previous order, this Court directed the trial Court to complete the trial within one year. However, he submits that the trial has not even commenced and accordingly he seeks bail.

2. Learned Additional Public Prosecutor has drawn my attention to the order dated 09.06.2021 passed by this Court in Criminal Application (BA) No.101/2021. Relevant part of the said order reads thus:

“08] Being relatives, the possibility of tampering the victim cannot be ruled out. If, there is no progress in the case for one year, the applicant is at liberty to ask for a bail. This liberty is granted considering the age of the applicant. The trial Court is directed to expedite the matter and to frame the charge as early as possible.”

3. The order does not direct the trial Court to complete the trial within one year. The submissions made to that effect by the learned counsel for the applicant is incorrect. Now, learned counsel for the applicant submits that he inadvertently made such a submission. He tenders unconditional apology. The apology is accepted with a rider that he will be careful henceforth while making such statements.

4. Heard learned counsel for the parties.

5. The applicant is seeking regular bail in Crime No. 451/2019 registered with Police Station, Umarkhed, District Yavatmal for an offence punishable under Sections 376(A) and 376(2)(F) of the Indian Penal Code and Sections 4, 6 and 8 of the Protection of Children From Sexual Offences Act, 2012. The accusation against the applicant is that he has sexually assaulted a five years old child.

6. Learned Additional Public Prosecutor invited my attention to the statement of the victim so also the witnesses. The witness supports the theory of the prosecution that the applicant has committed penetrative sex with the five years old child. The child having unable to sustain the pain, started crying. The witness who was residing near the spot of incident had been to her terrace to get the blanket and heard voice of crying of the child. It was between 07:00 to 08:00 p.m. She along with the other witness in the light of mobile

found that the victim child was crying and that the applicant was running from the spot.

7. The medical report support the theory of the prosecution of sexual assault as the report shows small contusion on libia majora, hymeneal tear, etc. Learned counsel for the applicant submits that there is no injury on the urethra. However, that part of the medical report cannot be considered ignoring the injuries referred to above.

8. The overall evidence, prima facie, appears to be overwhelming against the applicant. He appears to have committed the heinous crime. It will not be appropriate to release him on bail at this stage. The application is, accordingly, rejected with a request to the learned Judge of the trial Court to expedite the trial and complete the same, as expeditiously as possible.

The application is disposed of.

(Anil L. Pansare, J.)

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