

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

CRIMINAL APPLICATION (BA) NO.1288 OF 2022

Akash Ramesh Gole

Vs.

State of Maharashtra, through its PSO, PS, Dongaon, Tq. Mehkar, Dist. Buldhana 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 A.D.Raut, Advocate for applicant.

Shri I.J. Damle, APP for non-applicant no.1/State.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 20, 2023.

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

2. The applicant has been arrested on 17.07.2022 in Crime No.122/2022, registered with Police Station, Dongaon, Tq. Mehkar, District Buldhana for the offences punishable under Sections 363, 366A, 376(2)(j)(n) and 506 of the Indian Penal Code (for short, 'IPC') and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

3. The applicant is accused of committing rape on a minor girl. The incident has occurred on 24.05.2022. The victim was then aged about 17 years old. The date of birth of the victim is 06.06.2005. The uncle of victim has lodged First Information Report blaming that the

applicant has kidnapped his niece. Later on, it was revealed that the applicant has committed rape. The victim in her statement before police though has blamed applicant for having sexual intercourse without her consent, there is overwhelming material to show that they were in relationship. In fact, the statement itself is suggestive of such status. The victim was allegedly taken on motorcycle by the applicant on 24.05.2022. They went to various places viz. Mehkar, Nashik, Nagpur and Pune. They stayed at Pune. The victim states that applicant has committed sexual intercourse on the pretext of marriage. The Police, acting on the report of kidnapping, have managed to reach Pune on 17.07.2022 i.e. after about 54 days and brought victim back to her village. It appears that, the victim has, under the pressure, given statement on 19.07.2022. It can be said so, because when she was taken to hospital, she narrated a different (actual) story to the doctor.

4. History narrated by the victim clearly spells out that she was in relationship with the applicant. She willingly eloped with the Applicant. It further appears that they got married and lived together for two months. Ultimately, they were traced out and victim was brought back to her village. It is only thereafter she has changed her original version.

5. Exception (2) to Section 375 of the IPC provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not a rape. It will be thus challenging to the prosecution in the given facts and circumstances of the case to prove that the applicant has committed rape.

6. Learned Additional Public Prosecutor however submits that this defence will not be available to the applicant for the charge under the provisions of POCSO Act.

7. True it is that under the provisions of POCSO Act the child has been defined to mean any person below the age of 18 years and that therefore the theory of consensual relationship will not apply. At the same time, one cannot loose sight of the fact that personal liberty as guaranteed under Article 21 of the Constitution of India requires consideration from different perspective in such cases. The victim was about 17 years old. She had attained the age of sexual maturity. In that sense she could be said to have sufficient knowledge to understand the consequences of the act. It is nobody's case that the applicant had no intention to marry her, infact he appears to have married her.

8. It will not be out of place to mention here that in response to service of notice to the non-applicant

no.2/victim, though she did not appear, the Registry has received a letter dated 21.12.2022 purportedly written by the non-applicant no.2. She states in the letter that the act has been done with her consent and she intends to marry him (Applicant). She has made request to release the applicant. In the circumstance, the personal liberty of the Applicant cannot be compromised.

9. On enquiry of antecedents, learned advocate for the applicant submits that the applicant has no criminal antecedents. The applicant is not a habitual criminal. Therefore, no purpose will be served by keeping him behind bars. Interest of prosecution will be served by putting applicant on appropriate terms.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present Application only. The learned trial Judge, who is seisin of the trial, shall not get influenced with the above observations.

11. Resultantly, following order is passed.

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant – Akash Ramesh Gole, be released on bail, in connection with Crime No.122/2022, registered with Police Station, Dongaon, Tq. Mehkar, District

Buldhana for an offence punishable under Sections 363, 366A, 376(2)(j)(n) and 506 of the Indian Penal Code and under Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on he furnishing P.R. Bond in the sum of ₹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 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.

12. The application is disposed of in the above terms.

JUDGE

Wagh