

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

CRIMINAL APPLICATION (BA) NO. 1293/2022

Premlal s/o Anil Jhariya and anr. .vs. State of Maharashtra, through PSO PS.
Hudkeshwar, Nagpur, Dist. Nagpur 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. S. Bhalerao, Advocate for applicants.
Mr. I. Damle, A.P.P. for non applicant no.1.
Ms M. Sharma, Appointed advocate for non applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 25, 2023.

This is an application under Section 439 of the Code of Criminal Procedure. The applicant no.1 was arrested on 18.06.2022 and applicant no.2 was arrested on 21.06.2022 in Crime No.405/2022, registered with Police Station, Hudkeshwar, Nagpur, for an offence punishable under Sections 363, 376 (2) (n)(j) read with Section 34 of the Indian Penal Code and Sections 4, 6 and 17 of the Protection of Children From Sexual Offences Act.

2. There are three accused persons namely accused no.1-Bajrangi, accused no.2-Premlal and accused No.3-Durga. The statement of the victim indicates that on 12.06.2022, in the evening, she met Bajrangi. They were in relationship for last 3-4 months. Bajrangi took her to his house. Premlal was present in the house. Bajrangi proposed the victim to flee away. Accordingly at about 02:30 in the night, Bajrangi, victim and Premlal left the place and came to Nagpur at the house of Durga. At the house of Durga, her husband and her son were present.

She further stated that Bajrangi had informed Durga on phone that they will be reaching her house. They stayed in the house of Durga. On the next day, Durga helped Bajrangi and victim to procure rented room. The couple started residing in the house. Bajrangi committed sexual intercourse with the victim. On 16.06.2022, Bajrangi and victim solemnized marriage in Hanuman Temple in the presence of Premlal and Durga. Thereafter, they went to the house of Durga, had lunch and went back to their room.

3. In the meantime, mother of the victim lodged First Information Report of kidnapping by unknown persons. During investigation, the police found Bajrangi and victim together in the room. The victim being 12 years old, Bajrangi, Premlal and Durga have been booked for the offences under the provisions stated supra.

4. The only hurdle in the case is that the victim being the minor, her consent is immaterial. The learned A.P.P. and the learned counsel for the victim submits that the offence under question is serious. If released on bail, the applicants may pressurize the victim. However, what appears from the subsequent/supplementary statement of the victim is that she has been pressurized by the relatives to modify her earlier version. In the supplementary statement, the victim has straightway blamed Bajrangi of kidnapping by stating that he forcibly took her to his house. She further states that Bajrangi committed sexual assault on her when Premlal went outside. She then stated that she was taken to Nagpur where Durga helped them to stay at her house and performed their marriage

and also arranged for one room on rent. Thus the original/first version has been suitably modified.

5. Be that as it may, this being an application under Section 439 of the Code of Criminal Procedure, the role played by the applicants needs consideration. The role attributed to Premlal is that when Bajrangi and victim decided to elope, he accompanied Bajrangi from his house to Nagpur at the house of Durga. It is informed that Bajrangi is relative of Durga and in the said capacity she has assisted Bajrangi to procure a rental house. It further appears that when Bajrangi and victim solemnized marriage, Premlal and Durga were present. However, in the entire episode, there are no allegations that applicants and Bajrangi have in any way forced the victim either to elope or to perform marriage. Bajrangi and Premlal are 20 years old and Durga is 35 years old. There are no criminal antecedents against anyone. They are not habitual criminals, though Durga being senior member, she ought to have been little sensible and should have advised Bajrangi appropriately. The fact however remains that there is coercion at the hands of the applicant.

6. In these facts and circumstances, though learned A.P.P. and learned counsel for the victim have opposed the application on the ground that the allegations are serious, I am of considered view that no purpose will be served by keeping the applicants behind bars. The charge-sheet has been filed on 10.08.2022. The charge is not yet framed. It will take some time to commence and conclude the trial. The apprehension put forth by the learned counsel for the victim that the applicants may

pressurize the victim, can be dealt with by putting the applicants to suitable terms.

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

8. Resultantly, I pass the following order.

ORDER

(i) The application is allowed.

(ii) Applicant no.1-Premalal s/o Anil Jhariya and applicant no.2-Durga w/o Shersing Jhariya, be released on bail, in Crime No.405/2022, registered with Police Station, Hudkeshwar, Nagpur, for an offence punishable under Sections 363, 376 (2)(n)(j) read with Section 34 of the Indian Penal Code and Sections 4, 6 and 17 of the Protection of Children From Sexual Offences Act, on they furnishing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety each in the like amount.

(iii) The Applicants shall, at the time of execution of bond, furnish their addresses 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 applicants shall regularly attend the court and cooperate the learned trial Court to complete the trial in time. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicants shall not contact the victim in any manner.

(vi) The Applicants 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 Applicants shall not enter the territory of Hudkeshwar, where the victim resides.

(viii) The Applicants shall maintain law and order.

(ix) 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.

(x) The application is disposed of in the above terms.

Fees of Ms Mohini Sharma, Advocate appointed for the victim through High Court Legal Services Sub Committee, Nagpur shall be paid to her, as per the rules.

(Anil L. Pansare, J.)