

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

CRIMINAL APPLICATION (BA) NO. 1294/2022

(MANGESH RAMESH BHUTTAMWAR **VERSUS** STATE OF MAHARASHTRA, THR. PSO, PS WANI,
DISTRICT YAVATMAL & ANOTHER)

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

Court's or Judge's order

Shri S.M. Lodha, counsel for the applicant.
Shri A.M. Kadukar, Additional Public Prosecutor for the non-applicant no.1.
Ms Falguni Badani, counsel for the non-applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 21, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for grant of regular bail.

The applicant has been arrested on 10.05.2022 in Crime No.174 of 2022 registered with Police Station Wani, District Yavatmal for the offences punishable under Sections 363, 363A and 376(2)(j)(n) of the Indian Penal Code read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act').

Having heard the learned counsel for the parties and having gone through the material placed on record, it appears that the victim was seventeen years old at the relevant time. Her statement before the Child Welfare Committee clearly indicates that the victim and the applicant were in relationship. At the instance of the victim, the applicant took her to Yavatmal. Both resided together and indulged in sexual activities. In the meantime, the mother of the victim lodged the missing report. Accordingly, First Information Report was registered against the unknown person. During the course of investigation, the applicant and the victim were found at Gadchiroli. The victim was handed over to her parents. The applicant however is languishing in jail because of rigours under the provisions of the POCSO Act. The consent given by the girls below eighteen years is immaterial. One cannot however lose sight of the fact that the applicant and the victim are young. Both have sexual maturity and are aware of the consequences of the activities they had been indulged into.

In these circumstances, though the learned Additional Public Prosecutor and the learned counsel for the non-applicant no.2 oppose the application, it would not be proper to extend the incarceration of the applicant. The applicant is not habitual criminal and he is young boy of twenty three years. No fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution could be protected by putting the applicant to appropriate terms. Hence, the following order is passed:-

ORDER

1. The criminal application is allowed.
2. Applicant-Mangesh Ramesh Bhuttamwar be released on bail in connection with Crime No. 174 of 2022 registered with Police Station Wani, District Yavatmal for the offences punishable under Sections 363, 363A and 376(2)(j)(n) of the Indian Penal Code read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
3. The applicant shall at the time of execution of bond furnish his address with 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.
4. The applicant shall regularly attend the Court and co-operate 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.
5. 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.
6. The applicant shall not contact the victim in any manner pending trial.
7. The applicant shall maintain the law and order.
8. In case of breach of any of the aforesaid conditions, the trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.
9. The fees of the appointed counsel for the non-applicant no.2 be quantified and paid as per the Rules.

The criminal application is disposed of in aforesaid terms.

(ANIL L. PANSARE, J.)

APTE