

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

CRIMINAL APPLICATION (BA) NO. 1298 OF 2022

Banti Babulal Kurmi

..VS..

State of Maharashtra through PSO, P.S. Chamorshi, Distt. Gadchiroli 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 S.V. Sirpurkar, Advocate for Applicant.

Shri M.J. Khan, A.P.P. for Respondent No.1/State.

Ms. Kirti Deshpande, Advocate (appointed) for Respondent No.2.

CORAM : ANIL L. PANSARE, J.

DATED : MARCH 27, 2023.

1. Heard learned counsel for both the sides.
2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (in short "the Code"). The applicant have been arrested on 28.09.2021 in Crime No. 150/2019 registered with Police Station Chamorshi, District Gadchiroli for the offence punishable under Sections 3(1)(2), 4, 5 and 6 of Immoral Traffic (Prevention) Act, Section 363, 376(2)(n), 376(3), 376(D), 313(1), 366A, 372, 373 and read with Section 34 of the Indian Penal Code and Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
3. On 09th March, 2023, the following order is passed :-

"Heard for sometime.

2. The statement of the victim has multiple variations. In the first statement she does not blame anyone; in the second statement she

has stated that the Applicant has helped her; in the statement before the Magistrate she does not blame anyone; however, in the last statement dated 19/12/2020 she has narrated an altogether different story. She has blamed as many as fourteen persons for committing rape and one of them is the Applicant. She further states that on earlier occasion she did not disclose true facts because one Khobragade Madam threatened her that if she disclosed true facts, she will be sent back to Madhya Pradesh again.

3. It appears that Khobragade Madam is not made accused, despite there being serious allegations against her.

4. The learned APP seeks time to take instructions. Time granted.

5. The Investigating Officer to remain present on the next date to assist the Court.

6. Stand over to 20th March, 2023.

7. The Applicant is directed to remove office objections by the next date.”

4. Learned A.P.P. submits that in this regard enquiry had already been conducted in August 2021 and that it was found that allegations made against Ms. Nisha Khobragade, the then Investigating Officer were incorrect.

5. The statement made by learned A.P.P. is indicative of the fact that certain allegations were made by the victim against the then Investigating Officer but the allegations were found incorrect.

6. Learned counsel for the applicant submits that the discrepancies in the statement of victim will make her version doubtful and that the applicant will be entitled to be released on bail.

7. The learned A.P.P. could not point out any justification as to what prevented the victim from disclosing the true facts when her first statement was recorded. Further, in her second statement, she has stated that applicant has helped her. As such, the prosecution will have an opportunity to put forth the correct version of the crime in the form of victim's testimony so also other witnesses, which will be tested in cross examination, but then the discrepancies pointed out by the learned counsel for the applicant, will be advantageous to the applicant for releasing him on bail.

8. The charge-sheet has been filed. The charges have not yet been framed. It will take time to commence and conclude the trial. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long.

9. In view of above and considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail.

The interest of the prosecution can be protected by putting the applicant to appropriate terms.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Resultantly, following order is passed :

ORDER

(i) The Application is allowed.

(ii) The applicant- Banti Babulal Kurmi, be released on bail, in Crime No. 150/2019 registered with Police Station Chamorshi, District Gadchiroli for the offence punishable under Sections 3(1)(2), 4, 5 and 6 of Immoral Traffic (Prevention) Act, Section 363, 376(2)(n), 376(3), 376(D), 313(1), 366A, 372, 373 and read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 on he furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty thousand) with one or two sureties 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 mobile number(s) and 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 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 condition, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

(viii) Professional fees of the learned counsel appointed for respondent No.2 be quantified and paid, as per Rules.

The Application is disposed of in the above terms.

(ANIL L. PANSARE, J.)