

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

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CRIMINAL APPLICATION (BA) NO. 1302/2022

Roshan s/o Dhanraj Uike

.. Applicant

versus

1) The State of Maharashtra
Through its PSO, PS Kholapuri Gate
Amravati and another.

.. Respondents

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Mr. R. Siddarth, Adv.h/for Mr. P.V. Navlani, Advocate for the applicant
Mr. I.J. Damle, APP for Respondent No.1
Ms. Deepali Sapkal, Advocate (appointed) for Respondent No.2
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CORAM: ANIL L.PANSARE, J.

DATED : 10th January, 2023

PC:

Heard learned counsel for the respective parties.

2. The applicant, who is 22-years-old has filed the present application under Section 439 of Cr.P.C., seeking regular bail. The applicant has been arrested on 05.08.2022 in Crime No.208/2022 registered at Kholapur Gate Police Station, Armavati, for the offences punishable under Sections 376(3) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 1972 (POCSO).

3. Section 376 (3) of the IPC provides that whoever commits rape of a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life. Section 4 of the POCSO Act provides for punishment for committing penetrative sexual assault of ten years which may

extend to imprisonment for life. Section 6 of the POCSO Act provides for punishment for committing aggravated penetrative sexual assault of not less than twenty years, which may extend to imprisonment for life.

4. From the medical report of the examination of the victim, it is vividly visible that the possibility of penetrative sexual offence is ruled out. Thus, it is contrary to the case of the prosecution, at least on the point of penetrative sexual offence. What remains is only the statement of the victim. The offence alleged has been committed 15 days prior to recording the statement of victim, which has been recorded on 5th August, 2022. She states that at about 5.00 pm, the applicant had called her home on the pretext that applicant's wife wants to meet her. When she reached the house, the applicant's wife was not at home. The applicant closed the doors and committed sexual intercourse with her. The manner in which the incident is described indicates that it is a penetrative sexual intercourse. Thus, the version of the victim and medical report are contradictory.

5. The learned counsel for the applicant submits that there are no criminal antecedents against him. The applicant is residing at the address given since long in a rented premises. The learned APP apprehends that if the applicant is released on bail, he may pressurize the victim and the prosecution witnesses. However, the apprehension can be dealt with by putting stringent conditions on the applicant.

6. Considering the nature of evidence, I am of the considered view that personal liberty of the applicant cannot be compromised. Hence the order.

ORDER:

- (i) The Criminal Bail Application is allowed.
- (ii) The applicant - Roshan s/o Dhanraj Uike, shall be released on bail, on executing a PR bond in the sum of Rs.25,000/- (Rupees

twenty five thousand), in respect of Crime No.208/2022 for the offences punishable under Sections 376 (3) of the IPC and Sections 4 & 6 of the POCSO Act, 2012 registered at Police Station Kholapuri Gate, Amravati , with one solvent surety in the like amount.

(iii) The applicant shall attend the Police Station Kholapuri Gate, Amravati as and when directed by the Investigating Officer.

(iv) 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.

(v) The applicant shall not obstruct or tamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police.

(vi) The applicant shall not leave the territory of Kholapuri Gate Police Station, Amravati without prior permission of the Court, till the trial is over.

(vii) The applicant shall maintain law and order.

(viii) 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.

(ix) The applicant shall regularly attend the court and cooperate the learned trial court to complete the trial for the above offences.

(x) 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 sides.

7. The professional fees of Advocate (Ms). Deepali Sapkal (appointed), be quantified and paid as per the Rules.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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