



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

[Corrected as per
Court's order
Dated 09/01/2024]

CRIMINAL APPLICATION (BA) NO. 943/2023

(Jivan Sanjay More V/s State of Maharashtra and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.N.Ali, counsel for the applicant.

Mrs. Sneha Dhote, APP for the non-applicant No.1/State.

Mr. P.M. Pande, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 19/12/2023.

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure, 1973, in connection with Crime No.357/2023 registered with Police Station Risod, District Washim, for the offences punishable under Sections 376(2)(i)(3), 452, 354, 354(D), 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3, 4, 8, 12, 16 and 17 of the Prevention of Children from Sexual Offences Act, 2012. The applicant is arrested on 07/06/2023 and since then he is in jail.

2. The learned counsel Mr. M.N.Ali for the applicant submitted that at the time of incident, the victim alleged to be of 14 years and 9 months. Initially, the offence is registered against the present applicant, on an allegation that present applicant has subjected the victim for sexual assault on the promise of marriage by taking disadvantage of the age of the victim girl.

3. It is further revealed that the co-accused induced the present applicant and the victim, and introduced them with each other. She was forced for the said relationship, on the basis of said report, the police have registered the crime against the present applicant.

4. He further submitted that the applicant has annexed the love letters and photographs, which are written by the victim to the present applicant. He points out that there was a love affair between the victim and the present applicant and out of love affair, there was a physical relationship between them. Now, investigation is completed and charge-sheet is filed and further incarceration of the present applicant is not required.

5. The learned APP strongly opposed the application on the ground that during investigation, the statement of the victim is recorded, who specifically stated that on the inducement of the co-accused Chandrakant she was talking with the present applicant.

6. She further alleged that she was threatened by the present applicant and the co-accused that if she denies for the relationship, her parents would be killed. In the absence of her parents, the present applicant used to visit her house and subjected her for sexual assault by forcing her, on the basis of the said statements the offence under Section 376 was registered against the present applicant.

7. She further submitted that as far as the issue regarding the love affair is concerned, which is a matter of evidence. At this stage, the statement of the victim and the statement of the parents are sufficient to attract the provisions. Considering the gravity of the offence, the application deserves to be rejected.

8. The learned counsel for the victim also endorsed the same contention and prays for rejection of the application.

9. Having heard learned counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as far as the age of the victim girl is concerned, as per the FIR victim girl is of 15 years of age. During the investigation, the investigating officer has collected the lover letters and the photographs of the victim and the present applicant. From the said letters, it reveals that there was a love affair between the victim and the present applicant. Though, she has denied any relationship like a love affair between them and alleged that she was subjected for sexual assault by force but the love letters speaks otherwise.

10. It is apparent from the photographs and the said communication between themselves that out of love relationship they come together and there was a physical relationship between them. Admittedly, consent of the victim is not relevant as she is below 18 years of age. However, it is not a case, wherein the applicant has

induced her on the promise of marriage and subjected her for sexual assault.

11. On the contrary, it reveals that out of love relationship they come together and out of attraction there was physical relationship between them. Considering the nature and the circumstances, in which the alleged incident has taken place. The investigation is completed and charge-sheet has filed, no purpose will be served by keeping the present applicant behind bar. At the same time, considering the apprehension raised by the prosecution, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

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- a. The criminal application is **allowed**.
- b. The applicant -Jivan Sanjay More, in connection with Crime No.357/2023 registered with Police Station Risod, District Washim, for the offences punishable under Sections 376(2)(i)(3), 452, 354, 354(D), 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3, 4, 8, 12, 16 and 17 of the Prevention of Children from Sexual Offences Act, 2012, be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

- c. The applicant shall not enter into the vicinity of Gram Palaskheda, Tah. Risod District Washim till culmination of the trial.
- d. The applicant shall furnish his cellphone number and address along with the address proof.
- e. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution evidence.
- f. The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J]