



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

CRIMINAL APPLICATION (BA) NO. 963 OF 2023

Aasif Babu Saifee

..VS..

The State of Maharashtra through PSO, P.S. Gadchandur, Dist. Chandrapur & Anr.

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

Court's or Judge's orders

Mr. M.N. Ali, Advocate for applicant.
Mr. V.A. Thakare, APP for respondent No.1/State.
Mr. S. Nagrale, Advocate h/f. Mr. S.S. Dhengale, Advocate
for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 14, 2023

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.156/2023, registered with Police Station, Gadchandur, District Chandrapur for an offence punishable under Sections 376(2)(n), 376(3) read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act. The applicant is arrested on 19.05.2023.

3. The accusation against the present applicant is that the informant was having love affair with the present applicant since 2020. The informant alleged that said love affair was opposed by her parents, however, she continued the said love affair and the present applicant promised her for marriage and subjected her for sexual

assault. On the basis of said report, police have registered the crime against the present applicant.

4. The learned Counsel for the applicant submitted that now investigation is completed, charge-sheet is filed. Considering the recitals of the First Information Report (FIR), itself which shows that there was a love affair between victim and the present applicant. He further submitted that admittedly, the consent of the victim is not relevant but considering the investigation is completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar and hence he be released on bail.

5. The said application is strongly opposed by State on the ground that victim is only fifteen years of age at the time of incident and if the applicant/accused is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

6. Learned Counsel for the victim Mr. Nagrale also opposed the said application and placed reliance on *X (Minor) Vs. The State of Jharkhand & Anr.*, in *Criminal Appeal No.263/2022* and submitted that wherein the Hon'ble Apex Court has held that victim was barely thirteen years of age on the date when the alleged incident took place, both the grounds, namely that "there was a love affair" between victim and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail and rejected the bail.

7. Having heard the learned Counsel for the applicant and learned APP for the State and learned Counsel for the respondent No.2. Facts of the cited case shows that the victim was minor and there is second respondent had taken her to the residential hotel and had entered into a sexual relationship on the assurance of marrying her. Here in the present case, recitals of the FIR shows that there was a love affair between victim and the present applicant and victim used to visit him though, there was an oppose by the family members. She also visited his house at Gadchandur, Taluka Korpana, District Chandrapur. As per the allegation, when she had been to his house, he had subjected her to sexual assault.

8. Considering that victim was aged about fifteen years at the time of incident and the relationship developed out of love affair between them. Admittedly, her consent is not relevant but considering now investigation is completed, charge-sheet is filed, no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- i) The Criminal Application is allowed.
- ii) The applicant – Aasif Babu Saiffee is released on bail in Crime No.156/2023, registered with Police Station, Gadchandur, District Chandrapur for the offence punishable under Sections 376(2)(n) and 376(3) of the Indian Penal Code and Sections 4

and 6 of the Protection of Children from Sexual Offences Act, on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- iii) The applicant shall not induce, threat or pressurize any witnesses who are acquainted with the facts of the present crime.
 - iv) The applicant shall not enter into the village Gadchandur, Taluka Korpana, District Chandrapur where, the victim is residing and shall not in any manner contact with the victim.
9. The Criminal Application is disposed of.
10. In view of disposal of bail application, pending application(s), if any, are disposed of.

(URMILA JOSHI-PHALKE, J.)