

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

CRIMINAL APPLICATION (BA) NO.1367 OF 2022

Dr. Niraj S/o Kumarsingh Kadam .Vs. State of Maharashtra, through P.S.O., Arvi,
Dist. Wardha and another

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

Court's or Judge's Order

Shri S.P. Dharmadhikari, Senior Advocate a/w Shri C.S. Dharmadhikari and
Shri R.A. Bhandakkar, Advocates for the applicant.
Ms H.N. Jaipurkar, A.P.P. for the respondent/State.

CORAM : ANIL S. KILOR, J.

DATED : 06/02/2023

1. Heard.
2. The applicant has approached to this Court by filing the present application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.25 of 2022, registered with Police Station: Arvi, Dist. Wardha, for the offence punishable under Sections 376(3), 376(2)(n), 312, 313, 315, 341, 201 and 506 read with Section 34 of the Indian Penal Code (IPC) and Sections 4, 6 and 21(1) of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act).
3. Shri Dharmadhikari, learned Senior Advocate submits that this is successive application is filed for grant of bail, after withdrawal of the first application on 01.07.2022, in view of change in circumstances namely the main accused is released on bail by this Court vide order dated 26.09.2022 in Criminal Application (BA) No.935 of 2022.

4. Shri Dharmadhikari, learned Senior Advocate points out that as per the First Information Report (FIR), and material collected during the investigation, the allegations about abortion are against the main accused i.e. wife of the applicant Dr. Rekha Niraj Kadam. It is pointed out that, there are no allegations against the present applicant to attract the alleged offence against the applicant.

5. The learned Senior Advocate has further drawn attention of this Court to the reasons recorded by this Court while granting bail to the main accused Dr. Rekha and submits that as the case of the applicant is on a better footings than the main accused and as she has already been released on bail, the applicant is entitled for grant of bail on the principle of parity.

6. On the other hand, Ms Jaipurkar, learned A.P.P. strongly opposes the application and points out the allegations made against the applicant in the FIR and thereby, it is argued that the applicant did not inform the matter to the Police. On the contrary, he referred the girl for blood test. It is submitted that the said fact shows involvement of the applicant in the alleged offence and accordingly, she prays for rejection of the present application.

7. I have perused the charge-sheet and the order granting bail to the main accused Dr. Rekha.

8. This Court while granting bail to the Rekha, has observed thus :

“8. From the charge sheet, it can be seen that the applicant is a registered medical practitioner and possessing MBBS degree. Though the applicant is MD (Gynaecology), her registration is as a MBBS medical practitioner.

9. The hospital where the abortion was performed, is an approved hospital for the said purpose of provisions of the Act of 1971. Though the said hospital is having the approval in the name of the mother-in-law of the applicant, prima facie, the requirements under Sections 2(d) and 4(b) of the Act of 1971, will not be said to be violated because the applicant performed the abortion of the victim, for the reason that there are no allegations that the applicant is not a registered practitioner.

10. Thus, in the above referred backdrop, prima facie I find substance in the submission of the learned Senior Advocate for the applicant that at the most, Section 312 of the IPC and Section 21(1) of the POCSO Act will not attract.

11. From the charge sheet it can be further seen that the abortion was performed with consent of the parents of the victim and there are no allegations that without consent, the abortion was performed.

12. Thus, considering the character of evidence and the relevant provisions of the Act of 1971 and the IPC coupled with the period of incarceration of the applicant, I am of the opinion that as the investigation is completed and the charge sheet has been filed, the applicant is entitled for grant of bail.”

9. After going through the FIR, the allegations made against the applicant and after considering the fact that, the main accused has already been released on bail coupled with the period of incarceration of the applicant i.e. he is in jail for more than one year and the charge-sheet has already been filed, I am of the opinion that the applicant is entitled for grant of bail on parity. Accordingly, I pass the following order :

- a) The criminal application is **allowed**.
- b) It is directed that the applicant in Crime No.25 of 2022, registered with Police Station: Arvi, Dist. Arvi, for the offence punishable under Sections 376(3), 376(2)(n), 312, 313, 315, 341, 201 and 506 read with Section 34 of the Indian Penal Code (IPC) and Sections 4, 6 and 21(1) of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act), shall be released on bail on furnishing P.R. Bond of Rs.50,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station as and when his presence is required.
- d) The applicant shall not tamper with the prosecution witnesses.

The criminal application is **disposed of** accordingly.

JUDGE