



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

CRIMINAL APPLICATION (BA) NO. 975 OF 2023

Bhupesh Mohanlal Kanojiya
Vs.

State of Maharashtra, Thru. PSO, PS Desaiganj, Tah. Desaiganj, Dist. Gadchiroli and anr.

Office notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders.

Mr. R.P. Joshi, Advocate for applicant.
Mr. A.V. Palshikar, APP for non-applicant No.1/State.
Mrs. C.S. Bhute, Advocate (appointed) for non-applicant No.2.

CORAM : G.A. SANAP, J.

DATE : OCTOBER 20, 2023.

Victim is present. His father makes a request to provide Advocate at the cost of the State. Learned Advocate Mrs. C.S. Bhute is appointed to represent the non-applicant No.2.

2. Heard.

3. Applicant/accused No.3 has made this application for bail under Section 439 of the Code of Criminal Procedure in Crime No.225/2023, registered at Desaiganj Police Station, District – Gadchiroli, for the offences punishable under Sections 377, 506 read with Section 34 of the Indian Penal Code and Sections 4 & 6 of

the Protection of Children From Sexual Offences Act, (for short 'POCSO Act').

4. Learned Advocate Mr. Joshi appearing for accused No.3 submitted that perusal of the FIR and statement of the victim recorded under Section 164 of the Code of Criminal Procedure indicates that major role was attributed to accused-Akshay. It is pointed out that after year 2020, no role was attributed to the accused No.3, in any manner. Learned Advocate submitted that charge-sheet has been filed but charge has not yet been framed. Learned Advocate submitted that considering the available evidence on record, the accused No.3 may be granted bail. Learned Advocate submitted that accused No.3 is ready to abide by the conditions that may be imposed by this Court.

5. Learned APP has filed reply. He submitted that considering the serious nature of a crime, specific role having been attributed to the accused No.3, no case has been made out to release him. Learned APP further submitted that initially the victim was threatened by all the accused of dire consequences including the elimination of his family members and him. Learned APP submitted that if the accused is released on bail then considering his dominant position he would threaten and pressurize the victim and his family members. Learned

Advocate submitted that after great difficulties the victim could disclose this crime to his parents. Learned Advocate appointed to represent the victim has adopted the submissions made by the learned APP.

6. It is seen that the incident in question, as mentioned in the FIR, is from 01.04.2018 to 09.09.2023. FIR was registered on 09.06.2023. This accused was arrested on 10.06.2023. It is seen that in the FIR after the year 2020, no role has been attributed to the accused in the FIR as well as in the statement. It is true that prior to year 2020, specific role was attributed to the accused. Perusal of his statement recorded under Section 164 of the Code of Criminal Procedure, before the Magistrate, would show that it is silent about the role played by the accused No.3. It is further seen on perusal of the FIR and the statement of the victim recorded under Section 164 of the Code of Criminal Procedure that the major role in the commission of crime has been attributed to accused Akshay.

7. In the facts and circumstances, in my view, the case of accused No.3 stands on better footing than accused Akshay. In my view, in the totality of the facts and circumstances by exercising the discretion, the bail can be granted to accused No.3. The apprehension put-forth by the learned APP as well as by the learned Advocate for the victim can be taken care of by imposing suitable

conditions. The suitable and appropriate conditions can completely eliminate the apprehension. Accordingly, I proceed to pass the following order:

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant/accused – Bhupesh Mohanlal Kanojiya be released on bail in Crime No.225 of 2023, registered with Police Station Desaiganj, District: Gadchiroli, for the offences punishable under Sections 377, 506 read with Section 34 of the Indian Penal Code and Sections 4 & 6 of the POCSO Act, on his furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with solvent surety in the like amount.
- (iii) The applicant/accused No.3 shall not in any way tamper with the prosecution evidence.
- (iv) The applicant shall not pressurize or threaten the prosecution witnesses and victim.
- (v) The accused No.3 shall not enter the entire Gadchiroli District, till the completion of the trial except for attending the case at Sessions Court at Gadchiroli, on the given date and that too by

reporting his appearance at Desaignj Police Station, in advance.

8. The application stands disposed of.
9. Fees of appointed learned counsel be paid as per rules.

(G.A. SANAP, J.)