

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

...

CRIMINAL APPLICATION (BA) NO. 1430/2022

Kamlesh Pannalal Nagpure

.. Applicant

versus

1) The State of Maharashtra
Through the PSO, PS Sonegaon,
Dist. Nagpur and another.

.. Respondents

.....
Mr. M.R.Ali, Advocate for the applicant
Mr I.J. Damle, APP for Respondent No.1
Mr. A.K.Sarode, Advocate for Respondent No.2
.....

CORAM: ANIL L.PANSARE,J.

DATED : 10th January, 2023

PC:

Heard learned counsel for the respective parties.

2. The applicant has filed the instant Application under Section 439 of the Code of Criminal Procedure, seeking bail. The applicant has been arrested in respect of Crime No.154/2022 registered with Sonegaon Police Station, Nagpur for the offences punishable under Sections 363 and 354-A of the Indian Penal Code read with Section 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).

3. The applicant is the step father of the victim/non-applicant no.2. The mother of the victim lodged the FIR on 27th September 2022 mentioning therein that while she and her daughter were travelling in Nagpur Metro, the victim got down at Jaiprakashnagar Metro Station and thereafter went missing. The First Information Report was

accordingly lodged against unknown persons. It appears that the victim came back in a day or two. The statement of the victim has been recorded on 28th September, 2002 wherein she stated that she got down at Jaiprakashnagar Metro Station to meet her friend Gaurav. However, Gaurav's sister informed her that Gaurav is languishing in jail. She stated that she roamed aimlessly around a garden for quite some time and thereafter went back to her home. In the supplementary statement, which was recorded on 30th September, 2022, the victim has modified her version. In her statement she states that the applicant used to touch her inappropriately. Her statement also indicates that she ran away from the home twice, firstly on 1st September 2022 when she went to Pune as she wanted to reside there and thereafter on 26th September 2022.

4. The learned Advocate for the applicant submits that missing complaint was filed at that time as well. The Beltarodi Police Station, Nagpur brought her back. Her statement was recorded on 5th September 2022. However, at that time, she did not disclose before the police the inappropriate behaviour of the applicant-father. According to him, this modified version is for the reason that the applicant was against victim's relationship with Gaurav, who has criminal antecedents.

5. The learned APP has invited my attention to the statement of the victim recorded u/s 164 of the Cr.PC. The statement is akin to the supplementary statement. However, considering the nature of evidence, there appears absolutely no case u/s 363 of the IPC against the applicant. On the point of provisions of Sections 7 and 8 of the POCSO, the modified version will have to be considered in favour of the applicant for the purpose of releasing him on bail, particularly when on earlier

occasion, the victim did not disclose said fact to the police. However, to prevent further possibility of commission of similar such act which has been alleged by the victim, the applicant could be put to appropriate terms. Upon inquiry, the learned Advocate for the applicant submits that there are no criminal antecedents against the applicant. The applicant resides in his own house and as such, has strong roots in the society. Moreover, the trial will take its own time. Hence the following order :-

ORDER:

- (i) The Criminal Bail Application is allowed.
- (ii) The applicant- Kamlesh s/o Pannalal Nagpure, 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.154/2022 for the offences punishable under Sections 363, 354A of the IPC and Sections 7 & 8 of the POCSO Act, 2012 registered at Police Station Sonegaon Dist. Nagpur, with one solvent surety in the like amount.
- (iii) The applicant shall attend the Police Station Sonegaon, Nagpur 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 play mischief with the evidence collected or yet to be collected by the Police.
- (vi) The applicant and the victim shall not reside in one house.
- (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.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

sahare