



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

CRIMINAL APPLICATION (BA) NO. 1020/2023

(Sahil s/o Indrajit Yesansure 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. R.M.Daga, counsel for the applicant.

Mr. S.S. Hulke, APP for the non-applicant No.1

Mr. Anirudh Ananantkrishan, counsel (appointed) 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.328/2023 registered with Police Station Seloo District Wardha for the offences punishable under Sections 376(3) (2)(n) and Section 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offence Act, 2012. The applicant is arrested on 10/05/2023 and since then he is in jail.

2. The learned counsel for the applicant submitted that the crime is registered on the basis of a report lodged by the mother of the victim, on an allegation that the victim is her daughter aged about 15 years and studying in 10th Standard. When she had been to attend the marriage at Yavatmal, her daughter was not well and was omitting continuously. Therefore, she had taken her to the hospital of Dr. K.M.Kothari, who examined her and

disclosed that her daughter is pregnant. On inquiry, her daughter disclosed that the present applicant introduced himself with her and induced her to come to his home, and subjected her for sexual assault. On the basis of said report, the police have registered the crime against the present applicant.

3. During the investigation, the investigating officer has recorded the statement of the victim girl. As per the statement of the victim girl, she disclosed that the present applicant introduced himself as a Painter and called her on 2 to 3 occasions, she ignored him. Thereafter also, he called her and asked her to come at his home. Accordingly, she visited his house and shown him her disinclination to have a relationship with him. Then also, he repeatedly called her, and therefore, she went to his house and subjected her for sexual assault. On the basis of said report, police have registered the crime. After the registration of the crime, the wheels of the investigation started rotating.

4. During the investigation, the victim was referred for medical examination. The history narrated by the victim before the medical officer shows that while she was studying in the 10th Standard, she got acquaintance with the present applicant and they met with each other, there was a physical relationship between them, which was continued upto six months. The FIR is lodged after six months of the incident.

5. The learned counsel Mr. R.M.Daga for the applicant submitted that considering the history narrated by the victim, it reveals that out of the love affair they were attracted towards each other, and developed a physical relationship. Now, the investigation is completed, charge-sheet is filed and Further custody of the present applicant is not required. In view of that, he be released on bail.

6. Per contra, learned APP strongly opposed the present application on the ground that considering the statement of the victim wherein she nowhere stated that there was a relationship on her part with the present applicant. On the contrary, her statement shows that the present applicant induced her to have a relationship between them and subjected her for sexual assault. The consent of the victim is not relevant and prays for the rejection of the application.

7. The learned appointed counsel endorsed the same contention and submitted that considering that if the applicant/accused is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

8. Having heard learned counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that there was a physical relationship between the present applicant and the victim. The victim is on the verge of

attaining the majority i.e. 15 years of age. The history narrated by the victim shows that she got acquaintance with the present applicant and they developed a relationship, out of the said relationship, there was a physical relationship between them. Admittedly, the victim has not disclosed the incident to anybody, prior to lodging of this report. This fact came into the light, as the victim was omitting continuously and the said fact was noticed by her mother and taken to the hospital.

9. Though, in a statement victim has stated that she ignored the present applicant, the said statement is subsequently recorded, after her medical examination. Before the medical officer, she has specifically stated that out of acquaintance, she was meeting the present applicant and thereafter, there was a physical relationship between them. Considering the history narrated by the medical officer, it reveals that out of the love relationship, they came together and had a physical relationship. It is not a case, wherein the applicant has subjected her for sexual assault out of the lust, it reveals that the victim is 15 years of age whereas, the applicant is aged about 20 to 21 years and they came together. Out of the said love affair, they have attracted towards each other.

10. Moreover, considering this fact and the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. At the same time, considering the apprehension

raised by the learned APP, criminal application deserves to be allowed by imposing certain conditions. Accordingly, I pass the following order:

- a. The criminal application is **allowed**.
- b. The applicant -Sahil Indrajit Yesansure, in connection with Crime No.328/2023 registered with Police Station Seloo District Wardha for the offences punishable under Sections 376(3) (2)(n) and Section 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offence Act, 2012, be released on bail on furnishing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c. 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.
- d. The applicant shall furnish his cellphone number and address along with the address proof.
- e. The fees of the appointed counsel be quantified as per the Rules.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J]