

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

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CRIMINAL APPLICATION (BA) NO. 1473/2022

Manohar s/o Maroti Kolhe

..Applicant

versus

The State of Maharashtra

Th: Its PSO PS Saoner, Nagpur (R)

..Respondent

.....
Mr. V.R. Borkar, Advocate for the applicant

Mr. V.A.Thakare, APP for Respondent no.1

Ms. Mohini Sharma, Adv.(appointed) for Respondent No.2

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CORAM: ANIL L. PANSARE, J.

DATED : 14th February, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in Crime No. 316/2022 for the offences punishable under Sections 354, 354A, 34, 376, 376(2)(j), 376(2)(l), 376(2)(f), 376(d) of the Indian Penal Code read with Sections 4,8, 9(k), 9(g), 10 of the Protection of Children from Sexual Offences Act and also read with Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil, Aghori Practices and Black Magic Act, 2013 (for short “Black Magic Act, 2013), registered at Police Station, Saoner, Dist.Nagpur.

2. Briefly stated, the case of the prosecution is that the informant's niece is a mentally retarded person and is/was taking medical treatment. The co-accused Yuvraj Sontakke suggested through the informant to take his niece to the applicant, who is said to have cured many people. The co-accused appears to have stated that he will

have to keep the victim at the place of the applicant for eight days and assured that the victim will be cured. The co-accused took the informant, her husband and victim to the house of the applicant. The medical issue of victim was narrated to the applicant. The applicant suggested some remedies viz. cutting lemon and putting it underneath pillow etc., which is said to be an offence punishable under the provisions of the Black Magic Act, 2013. The applicant suggested the co-accused and parents of the victim that the victim will have to stay back in his house. The informant having faith in the applicant, agreed to do so. Thereafter the co-accused said to the applicant that victim is his niece and that he (co-accused) will take her care. The co-accused then took the victim in the room by asking applicant to stay outside. The husband of informant and her nephew came at applicant's house at 9.00 p.m. to see the victim. When they knocked the doors, the co-accused was found half naked and that he fled away. The victim too was found naked in the room. It appears that the victim has narrated her plight to the informant. She said that the applicant has moved his hands over her back and pressed her back and that the co-accused has taken her in the room and committed sexual assault. She has not blamed the applicant for the sexual assault. Thus, the co-accused Yuvraj has committed the sexual assault.

3. Learned counsel for the applicant has rightly pointed out that the role assigned to the applicant can be distinguished from the role assigned to the co-accused. It is the co-accused who has committed the sexual assault, so also the crime. The co-accused is the one who has brought the victim at the place of the applicant. He submits that the applicant could, at the most, be blamed for conducting black magic practices but he is not involved in the crime u/s 376 of the IPC or the

provisions of the POCSO. It is the co-accused who said to the applicant that the victim is his niece and will take care of her and that the co-accused took her in the room. It is nobody's case that the applicant has forced himself upon the victim. The only allegation is that he has moved his hands over her back and pressed it. The applicant maintains that he can cure the persons with mental disability. Thus, it is argued that the applicant cannot be blamed for the offence punishable u/s 376 of IPC and relevant Sections of POCSO.

4. The learned APP, however, submits that it is the applicant who has asked the informant to keep her niece at her house and that therefore he is the prime accused.

5. I do not find any substance in the submission inasmuch as there is no evidence that the applicant has asked victim to stay back with intent to commit the crime. He may be accused of commission of offence under the provisions of the Black Magic Act, 2013 but then on the point of sexual assault, neither the victim nor the witnesses has really made a statement to show complicity of the applicant with the crime.

6. The applicant is behind the bars since 04th May 2022. The charge-sheet has been filed. The charge has not yet been framed and it will take some time to commence and conclude the trial. When enquired, learned Advocate for the applicant states that there are no criminal antecedents against the applicant. He is residing in the address given for last so many years. In view of the above and considering the nature of evidence against the applicant, I am of the view that no fruitful

purpose will be served by keeping him behind the bars.

7. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

8. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Manohar Maroti Kolhe, be released on bail in Crime No. 316/2022 for the offences punishable under Sections 354, 354A, 34, 376, 376(2)(j), 376(2)(l), 376(2)(f), 376(d) of the Indian Penal Code read with Sections 4,8, 9(k), 9(g), 10 of the Protection of Children from Sexual Offences Act and also read with Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil, Aghori Practices and Black Magic Act, 2013, registered at Police Station, Saoner, Dist.Nagpur, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) 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.
- (iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) 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 from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) 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 the sides.

9. Professional fees of Ms.Mohini Sharma,Advocate (appointed) be quantified and paid as per the Rules.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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