

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

CRIMINAL APPLICATION (BA) NO.1480/2022

Mrs. Sargam @ Yasmin d/o Mehmood Alam Khan .vs. State of Maharashtra
through PSO P.S. Sakkardara, Dist. Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. T. Bhautik, Advocate for applicant.
Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 17, 2023.

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (for short the "Code"). The applicant has been arrested on 30.08.2022 in Crime No.424/2022, registered with Police Station Sakkardara, Nagpur, for the offences punishable under Sections 363, 366A read with Section 34 of the Indian Penal Code, 1860.

2. Briefly stated, the case of the prosecution is that the informant's daughter aged 14 years was, on 29.08.2022, kidnapped by the present applicant from the area situated near Hazrat Baba Tajuddin Darga, Sakkardara, Nagpur. The tower location of the mobile indicated that the applicant and the victim were at Raipur, Chattisgarh. Immediate action was taken by the police. The victim and the applicant were taken into custody from Raipur and were brought to Nagpur. During investigation, offence under Section 366A of the IPC has also been added against the applicant. According to the prosecution, the applicant and one Ashma are involved in the crime.

3. The learned counsel for the applicant has rightly argued that there is absolutely no evidence to attract ingredients of Section 366A of the IPC. Section 366A reads thus:

“366A. Procuration of minor girl — Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

4. The learned A.P.P. could not point out to the Court any material to show that the victim was kidnapped with an intent to force or seduce her to illicit intercourse with any person. Thus, prima facie, it is quite challenging for the prosecution to prove complicity of the applicant with the crime under Section 366A. What is then left is the offence under Section 363 of the IPC, which is a bailable offence.

5. Learned A.P.P. then submits that the applicant is resident of Sambhalpur, therefore, there is every likelihood of her abscondance. This apprehension can be taken care of by putting the applicant to appropriate terms. However, once it is found, though prima facie, that the ingredients of Section 366A of the IPC may not attract and that the offence under Section 363 of the IPC is bailable, personal liberty of the applicant cannot be compromised.

6. The investigation is complete. The charge-sheet has been filed on 21.10.2022. It will take time to commence and

conclude the trial. In the circumstances and considering the nature of evidence against the applicant, no fruitful purpose will be served by keeping the applicant behind the bars. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

7. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by any of the observations made hereinabove.

8. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant – Sargam alias Yasmin d/o Mehmood Alam Khan, be released on bail in Crime No.424/2022, registered with Police Station Sakardara, Nagpur, for the offences punishable under Sections 363, 366A read with Section 34 of the Indian Penal Code, 1860, on she executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not leave the territory of Nagpur city without prior permission of the trial Court.

(iv) The applicant shall, at the time of execution of bond, furnish her 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.

(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/her 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 condition, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

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