



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

CRIMINAL APPLICATION (BA) NO.154 OF 2024
(Akshay Samadhan Sirsath Vs. The State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M.N. Ali, Advocate for the applicant.
Ms Kolhe, APP for the State.
Ms C.S. Bhute, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 15, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 03/03/2022 in connection with Crime No.31/2022 registered with Police Station Dhanaj, District Washim for the offence punishable under Sections 376(2)(n), 376(3) 506 read with Section 34 of the Indian Penal Code and Sections 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by mother of the victim on an allegation that her elder daughter aged about 15 years was sent by her on 12/02/2022 at about 4:30 p.m. to clean the courtyard of the house. After sometime, she given a call to the victim but victim has not responded, therefore, she went outside and saw that the victim was communicated with the present applicant, therefore, she called the victim inside the house and on enquiry with the

victim, victim disclosed that she got acquaintance with the applicant to one Pankaj Chavan and applicant used to call her on various occasions and subjected her for sexual assault. On the basis of said report, police have registered the crime against the present applicant. During investigation, the statement of the victim was also recorded from which involvement of the present applicant was revealed.

3. Learned Counsel for the applicant submitted that there was a love affair between the victim and the present applicant. From the WhatsApp chat it reveals that it was a victim who was demanded the sexual favours from the present applicant, and therefore, out of love affair there was physical relationship between them. Now, investigation is already completed, charge-sheet is filed, further incarceration of the applicant is not required. He also invited my attention towards some photographs to show that there was a love affair between the present applicant and the victim.

4. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the said application on the ground that at the time of first incident, victim was only 13 years of age. Her consent is not relevant. The applicant has subjected her for sexual assault on the promise of marriage. Considering the nature of the offence, if applicant/accused is released on bail, he would tamper with the prosecution evidence. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers. From the recitals of the FIR and the statement of the victim it reveals that the victim who was 15 years of age was subjected for sexual assault by the present applicant. Admittedly, the consent of the victim is not relevant being she is below 18 years of age. However, at the same time it requires to be seen in what circumstances the alleged incident has taken place. From the WhatsApp chat which is part of the investigation it reveals that Investigating Officer has collected the photographs and also the WhatsApp chat between the victim and the present applicant. From the WhatsApp chat it reveals that it was the victim who was demanding the sexual favours from the present applicant. Thus, it appears that out of the love affair the victim and the present applicant had physical relationship and it was the victim who was demanding the sexual favours from him. Now, the investigation is already completed and charge-sheet is already filed. Even considering the case as it is, it is not that out of the lust, the applicant has subjected her for the sexual assault, but it is out of love affair they come together and it is a romantic relationship between them which resulted into the physical relationship between them. Considering now the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required. Hence, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass

the following order :

- (i) The application is allowed.
 - (ii) The applicant – Akshay Samadhan Sirsath in connection with Crime No.31/2022 registered with Police Station Dhanaj, District Washim for the offence punishable under Sections 376(2)(n), 376(3) 506 read with Section 34 of the Indian Penal Code and Sections 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on his executing a PR.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.
 - (iii) The applicant shall not enter into the vicinity of Naregaon, Taluka Karanja, District Washim till culmination of the trial.
 - (iv) The applicant shall attend the proceeding before the trial Court regularly without seeking any exemption unless there are exceptional circumstances.
 - (v) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.
6. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)