



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

CRIMINAL APPLICATION (BA) NO.183 OF 2024
(Snehal s/o Mukesh Surkar Vs. 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. H.D. Dangre, Advocate for the applicant.
Ms Prabhu, APP for the State.
Ms A.S. Mishrikotkar, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 3, 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 28/09/2023 in connection with Crime No.413/2023 registered with Police Station Khapa, Taluka Saoner, District Nagpur for the offence punishable under Section 354-A, 354-D, 376(2)(n), 376(d), 376(da) and 506 of the Indian Penal Code, Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 67, 67(a), 67(b) of the Information Technology Act, 2000.

2. As per the accusation, the crime is registered on the basis of report lodged by the mother of the victim on an allegation that on 23/09/2023 the brother-in-law of the informant came to her house and informed her that Open photos of her daughter have been leaked online. On enquiring about the same with her daughter, victim

informed that on 02/03/2023 when she was returning home from school after her examination the co-accused Dhiraj Hiwarkar restrained her and demanded from her to send the open pictures to him and when she refused he threatened to kill her father and cause loss to his shop. As a result, she got scared and sent her open pictures to Dhiraj on Snapchat then said Dhiraj asked her to meet him after 2-3 days but she did not go. It is further alleged that after a few days when victim was returning home after her examination, the co-accused Dhiraj met her again and asked her to meet him otherwise he would leak her open pictures if she refused to meet him and thereafter the victim took his phone and deleted her pictures from his phone. It further alleged that one Sudarshan Parate who worked at the shop of the husband of the complainant came to her and showed her the viral Open pictures of her daughter. On enquiring with her again she told that allegedly above mentioned Dhiraj Hiwarkar had sent these pictures to his friends including the present applicant. It is alleged that these people also stopped her in her way and asked her to meet. The daughter of the complainant then went to meet them and deleted her pictures from their phones. It is alleged that the victim was subjected for sexual assault by the co-accused. On the basis of said report, police have registered the crime against the co-accused.

3. Learned Counsel for the applicant submitted that as far as the first incident was concerned the

applicant is not at all concerned about the same. The name of the present applicant is neither mentioned in the FIR and nor mentioned in the statement which is recorded by the investigating agency on 26/09/2023. The name of the present applicant first appeared in a subsequent statement which is recorded on the same day i.e. on 26/09/2023 and that is only a stray statement that present applicant along with other co-accused threatened her that he would made the photos viral. He also invited my attention towards the Panchanama by which the mobile phone of the applicant is seized and submitted that said mobile phone was seized by drawing the panchnama on 26/09/2023. Said panchnama nowhere discloses that the Investigating Officer has seen any folder or file in the said mobile phone or any application showing that he has stored the said photographs in his mobile phone. He also invited my attention towards the forwarding letter to the Chemical Analyzer Forensic Lab, Nagpur and submitted that the mobile phone of the present applicant is at Exhibit 14. It also nowhere shows that any application or folder or file is seen by the investigating agency showing the photographs of the victim in the said mobile phone. He submitted that considering the nature of the allegations admittedly no case made out against the present applicant to attract the offence punishable under Section 376(2)(n), 376(d), 376(da), 354-A, 354-D and 506 of the Indian Penal Code and under Sections 4, 6, 11 and 12 of the POCSO Act and at the most after chemical

analyzer report if there is any file or folder, the offence under the Information Technology Act would attract. He submitted that now investigation is completed, charge-sheet is filed, mobile phone is already seized, further incarceration of the present applicant is not at all required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the application on the ground that if the applicant/accused is released on bail he would tamper with the prosecution evidence and would not be available for trial.

5. Having heard learned Counsel appearing for the parties. Perused the entire investigation papers. There is no dispute as to the fact that in initial statement the victim has not narrated the name of the present applicant. As far as threatening is concerned except the statement of the victim i.e. also general in nature, there is no other material to show that the present applicant is having the objectionable photograph of the victims in his mobile phone. Even the Panchanama by which the mobile phone of the applicant is seized also nowhere shows that the investigating agency either found any folder or file in the said mobile phone having photographs of the victim, the forwarding letter itself shows that the mobile phones bearing Exhibit Nos.12, 13 and 14 have no passwords. So it is not the case of the prosecution also that due to

unavailability of the password they could not open the mobile phone and could not see whether there is any objectionable material or not. Considering now the investigation is already completed and charge-sheet is filed, mobile phone is already seized and the offences under the provisions of the IPC are not made out against the present applicant. The prayer of the present applicant for grant of bail deserves to be considered. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Snehal s/o Mukesh Surkar in connection with Crime No.413/2023 registered with Police Station Khapa, Taluka Saoner, District Nagpur for the offence punishable under Section 354-A, 354-D, 376(2)(n), 376(d), 376(da) and 506 of the Indian Penal Code, Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 67, 67(a), 67(b) of the Information Technology Act, 2000, be released on bail on executing a 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 jurisdiction of the Nagpur district without

prior permission of the District Court.

(iv) The applicant shall attend the police station once in a month i.e. on first day of every month, till the culmination of the trial.

(v) The applicant shall attend the proceedings regularly without seeking any exemption unless there are exceptional circumstances.

(vi) 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 including the victim.

6. The application stands disposed of.

7. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*