



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

CRIMINAL APPLICATION (BA) NO.247 OF 2024
(Amol s/o Pandurang Narnaware 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.D.I. Mahajan, Advocate h/f Mr. R.D. Murkute, Advocate for the applicant.
Ms S. Dhote, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 26, 2024.

The applicant is seeking bail as he was arrested on 15/11/2019 in connection Crime 263/2019, registered with Police Station Duggipur, District Gondia, for offences punishable under Sections 376(d), 307 read with Section 34 of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of report lodged by mother of the victim on an allegation that on 03/11/2019 some drama was arranged in her village and at about 8.00 PM the inauguration of the said drama was conducted thereafter her daughter went along with the school identity card to watch that drama. After sometime her son returned home and therefore, her husband has also taken her to son to watch the drama. At about 9.30 PM one Kailash Tiwaskar returned at her home along with her daughter and disclosed that one boy has taken the victim who is 10 years of age near the lake and subjected

her for sexual assault by threatening her and also assaulted. At the relevant time, other 3 to 4 boys were also there and they were watching the incident. On the basis of said report, police have registered the crime against the present applicant and other co-accused. During investigation, the statement of the victim was also recorded who has narrated about the alleged incident. She further narrated that attempt was made to eliminate her and she was left at the said place and after regaining consciousness she came on the road, and therefore, said Kailash has brought her at home. During investigation the present applicant was put in the identification parade wherein the victim has identified the present applicant and as per the investigation papers the role attributed to the present applicant that he was watching whether anybody is approaching when the alleged incident of the sexual assault by the other co-accused. On the basis of the investigation carried out the applicant was arraigned as an accused.

3. Learned Counsel for the applicant submitted that other co-accused is already released on bail. Similar role is attributed to the present applicant. In view of that, he be released on bail. Now, the investigation is almost completed and charge-sheet is filed. There is no progress in the trial and for that reason also the applicant be released on bail.

4. After service of notice, none appears for non-applicant No.2.

5. Learned APP submitted that considering the fact that a victim is a 10 years old girl who was subjected for sexual assault by the co-accused and the present applicant who was present there who was employee of the said drama company kept watch whether anybody is approaching and victim was ravished in a very brutal manner and thereafter she was assaulted to eliminate her. On the basis of the said report, the police have registered the crime. She invited my attention towards the statement of the victim and T.I. parade. During T.I. parade victim has identified the present applicant. Thus, she submitted that the role of the present applicant cannot be equated with the co-accused who is already released on bail as he was not identified during the identification parade.

6. I have heard learned Counsel for both the parties. Perused the entire investigation papers from which it reveals that a 10 years small girl had been to watch the drama which was in the village and she has carried her identity card as they were promised that they can watch the said drama without any fees. She along with the other girls had been to watch the said drama. She left the pendol of the drama to attend the nature's call at that time the other co-accused approached to her and on the pretext of showing the place for the nature's call took her at some distance and ravished her. At the relevant

time, the present applicant was keeping watch whether anybody is approaching and at the relevant time the co-accused subjected her for sexual assault. The present applicant was put for the identification parade. The victim has identified the present applicant. Thus, the presence of the present applicant reveals from the investigation papers at the spot of incident. Thus, considering that 10 years girl was subjected for sexual assault by the co-accused with the assistance of the present applicant *prima facie* case is made out against him. In view of that, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*