



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

CRIMINAL APPLICATION (BA) NO.304 OF 2024
(Shivam s/o Mahesh Gupta 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. J.S. Hirekhan, Advocate for the applicant.
Mr. N.B. Jawade, APP for the State.
Ms A.P. Murrey, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MAY 6, 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 22/05/2023 in connection with Crime No.190/2023 registered with Police Station Duggipar, District Gondia for the offence punishable under Sections 363, 366, 366-A, 376(2)(n), 376(3) of the Indian Penal Code and Sections 4, 6 and 8 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 the mother of the victim girl on an allegation that her daughter aged about 13 years has left the house on 19/05/2023 and not returned back. She searched for her but could not trace her. On the basis of said report, the crime was registered against the unknown person. During investigation, victim girl was found along with the accused, therefore, her statement

was recorded by the Investigating Officer from which it revealed that she got acquaintance with the present applicant when she was studying in 8th standard. They were communicating each other. On 14/05/2023 when she was present in her house she received a phone call of the present applicant who called her on Sakoli bus stand thereafter she along with the accused went at Sakoli. From Sakoli they went at Gondia. They have purchased some articles and thereafter performed the pooja in temple and also performed the marriage. It is further alleged that thereafter the applicant has subjected her for sexual assault. On the basis of said statement, the crime was also registered under Section 376 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that as far as the allegation of kidnapping is concerned, the victim has left the house at her own and joined the company of the present applicant thereafter they roamed at various places. She has not made any grievances that she was brought by the accused by using force. They also performed the marriage. Thus, out of love affair she left the house of her parents and joined the company of the present applicant. Now, the investigation is already completed and charge-sheet is already filed. The applicant is behind bar since the date of his arrest. Considering the same, 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 victim girl is only 13 years of age, her consent is not relevant. Considering the applicant is a grown up boy who subjected her for sexual assault. Hence, 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 it reveals that victim girl is 13 years of age and was studying in 8th standard at the time of incident. The FIR is lodged as victim has left the house without informing anybody, and therefore, initially offence was registered under Section 363 and 366 of the IPC. During investigation, the victim was found along with the accused, her statement was recorded by the police as well as under Section 164 of the Cr.P.C. From the said statement, it reveals that the victim has joined the company of the accused out of love affair and thereafter they went at various places. Admittedly, from her statement it reveals that she has not made any grievances against the present applicant to the extent that either he has brought her by using force or by promising anything. It is apparent that out of love affair, she herself joined the company of the accused and thereafter performed the marriage with him. Admittedly, the consent of the victim is not relevant but considering the fact that though she is of aged about 13 years but it was she who joined the company of the present applicant and though they roamed

at various places, not made any grievances about the sexual assault or forceful sexual assault by the present applicant. Considering the fact that now investigation is completed and charge-sheet is filed, the applicant is behind bar since the date of his arrest, his further incarceration is not required, and therefore, application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Shivam s/o Mahesh Gupta in connection with Crime No.190/2023 registered with Police Station Duggipar, District Gondia for the offence punishable under Sections 363, 366, 366-A, 376(2)(n), 376(3) of the Indian Penal Code and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iii) The applicant shall not enter into the village Heti, Taluka Sadak Arjuni, District Gondia till the culmination of the trial.

(iv) 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.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*