



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

CRIMINAL APPLICATION (BA) NO.701 OF 2024

(Abhishek @ Yogesh Maroti Patre 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. N.B. Kalwaghe, Advocate for the applicant.
Mr. S.S. Hulke, APP for the State.
Mr. P.K. Raulkar, Advcoate for non-applicant No.2

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- SEPTEMBER 19, 2024.

By this application, the applicant is seeking bail as the applicant came to be arrested on 30/04/2024 in connection with Crime No.377/2023 registered with Police Station Pophali, District Yavatmal for the offence punishable under Section 376(2)(j), 342 and 506 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of report lodged by the victim girl who is 17 years and above on an allegation that the applicant is resident of the same village and he used to follow her when she was attending the college. On 09/12/2023, the applicant restrained her on the road and handed over her mobile phone which she denied to accept. On that he forcefully took her in the house of the one Vijay Patre and subjected her for forceful sexual assault. It is further alleged that he detained her till 3:00 PM. She shouted for help, at the relevant time her

aunt came there and knocked the door on which the applicant has opened the door and he ran away from the spot. She immediately narrated the incident to her aunt. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that this allegation is to be seen in the light of the various circumstances and he invited my attention towards the spot panchnama and submitted that the spot is surrounded by various houses of the independent person of whose statements are not recorded by the investigating agency. He submitted that even the statement of the owner of the house shows that at the relevant time his father was in the house. He further invited my attention towards the statement of the victim and her aunt which are recorded under Section 164 of Cr.P.C. and submitted that as per the statement of the aunt of the victim, after he opened the door victim ran away from the spot whereas statement of the victim shows that as soon as the door was opened by her aunt she gave a hug to her aunt and disclosed the said incident. Thus, he submitted that considering that statements of the independent witnesses are not recorded, at least to show the foundational facts that the presence of the present applicant and the victim was noted by somebody or they have heard any noise from the house. He further submitted that when the father of the Vijay Patre was present in the house, it is difficult to

believe that such type of incident would happened in the house. Now, the investigation is completed and charge-sheet is filed. He further submitted that the affidavit filed by the victim shows that she has no grievances and out of grudge and rivalry this FIR came to be lodged. He submitted that in the light of the above all circumstances and considering the investigation is completed and charge-sheet is filed, the applicant be released on bail.

4. Learned APP strongly opposed the application and submitted that the statement of the victim and her medical examination as well as her statement recorded under Section 164 of Cr.PC. substantiates the allegations. Considering the *prima facie* case is made out against the present applicant, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the FIR is lodged by the victim herself. The allegation is to be seen in the light of the spot panchnama which is drawn immediately after the incident. The spot panchnama shows that the alleged spot of incident is surrounded by the houses of various persons. None of the statements are recorded by the Investigating Officer during the investigation. It further reveals that there is a variance in the statement of the victim and her aunt. As far as the disclosure recording the incident is concerned,

when their statements are recorded under Section 164 of Cr.P.C. Admittedly, now the investigation is completed and charge-sheet is filed, the victim has also filed an affidavit contending that out of rivalry and grudge against both families and due to the pressure of her family this FIR was lodged by her. Considering the entire circumstances and considering the fact that now investigation is completed and charge-sheet is filed. The applicant has made out a case to grant him bail. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Abhishek @ Yogesh Maroti Patre in connection with Crime No.377/2023 registered with Police Station Pophali, District Yavatmal for the offence punishable under Section 376(2)(j), 342 and 506 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, 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 enter into the vicinity of village Mulawa, Tahsil Umarkhed, District Yavatmal till culmination of the trial.

(iv) The applicant shall attend the proceedings before the trial Court 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 is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*