



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.718 OF 2023

Nitin Damodar Dhaberao

Vs.

State of Maharashtra, Through Police Station Officer of Police Station, Anjangaon
Surji, District Amravati and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. S. S. Jadhav, Advocate for applicant.

Mr. A. R. Chutke, APP for non-applicant No.1/State.

Ms. Deepali P. Shahare, appointed Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 05/01/2024

1. By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.411/2020 registered with Police Station, Anjangaon Surji, District Amravati for the offences punishable under Sections 363, 376, 376(2)(n), 376(3) read with Section 34 of the Indian Penal Code and Sections 4, 6 and 17 of the Protection of Children From Sexual Offences Act, 2012. The applicant is arrested on 30.08.2020 and since then he is behind bars.

2. The accusation against the present applicant is on the basis of the report lodged by father of the victim, on an allegation that victim is his daughter aged about 13 years old and was studying in the school and at the relevant time on 23.08.2020 his daughter left the house on the pretext that she is leaving the house to bring the book and not returned back. He searched for

her, but could not traced her, therefore, he lodged the missing report. After registration of the missing report, the police investigated the matter and the victim was traced. Her statement was recorded and she stated that the applicant is residing in her neighbourhood. She got acquaintance with him. He expressed his feelings that he loves her. She also accepted the feelings expressed by the applicant and they used to communicate with each other. On 22.08.2020 she had been to her grandmother's house and she received the phone call on the mobile phone of her grandmother and asked her to come along with him on the promise of marriage. Thereafter, she took the golden ornaments and cash amount from her house and went along with the present applicant. They stayed at various places. On 29.08.2020 she received a phone call of her grandmother and other relatives and she disclosed that she is at Bangalore. Thereafter, she returned back at home and police have recorded her statement. After recording her statement, the offence under Section 376(2)(n) is registered against the present applicant.

3. Learned Counsel for the applicant submitted that though victim is aged about 13 years, but as there was a love affair between the present applicant and the victim, she left the parent's house and joined the company of the present applicant. Though they stayed at various places she has not made any grievance that applicant had subjected her for forceful sexual intercourse. Out of love affair, she joined the company of

the present applicant and there was no intention to commit the breach of any promise. There was no physical relationship between them. The medical certificate also not supports as no external injuries are found on the person of victim. Now, investigation is completed and charge-sheet is filed. The applicant is behind bar since 2020. There is no progress in the trial. Considering the same, the applicant be released on bail.

4. Said application is strongly opposed by the State on the ground that victim is only 13 years of age, her consent is not relevant. Though victim has left her house at her own, but the applicant who is a mature person known the consequence of his act subjected her for forceful sexual intercourse. If applicant is released on bail, he will tamper with the prosecution evidence. In view of that, the application deserves to be rejected.

5. The learned appointed Counsel for the victim also endorsed the same contention and prays for rejection of the application.

6. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that applicant is arrested on 30.08.2020 and there is no progress in the trial though charge-sheet is filed on 26.10.2020. As far as merit is concerned, admittedly victim is of 13 years of age and her consent is not relevant. However, the statements which are recorded by the Investigation Officer shows that victim has left her

house at her own accord on the pretext of bringing the book from friend and not returned back at home. She also joined the company of the present applicant and also admitted her love relationship with the present applicant in her statement. From her statement it reveals that, she stayed along with the present applicant at various places and not made any grievance as she was taken by the present applicant by using some force. Thus it is apparent that, out of the love affair, she joined the company of the present applicant. The applicant is also of a tender age of 26 years and out of love affair they come together. It seems that, the alleged incident of sexual relationship is out of the attraction between the two young persons and it is not the case that applicant has subjected the victim for a sexual assault out of lust. Considering the fact that, though charge-sheet is filed long back in the year 2020 and there is no progress in the trial and trial will take its own time for final disposal. In view of that, further incarceration of the present applicant is not required and no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Nitin Damodar Dhaberao** be released on bail on executing PR

bond in the sum of Rs.25000/- with one solvent surety in the like amount, in connection with Crime No.411/2020 registered with Police Station, Anjangaon Surji, District Amravati for the offences punishable under Sections 363, 376, 376(2)(n), 376(3) read with Section 34 of the Indian Penal Code and Sections 4, 6 and 17 of the Protection of Children From Sexual Offences Act, 2012.

(iii) The applicant shall not enter into the jurisdiction of village Chausala, till the culmination of the trial.

(iv) The applicant shall furnish his address of residence after releasing him on bail and shall furnish the names of two relatives and their addresses, before the trial Court.

(v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(vi) The fees of the appointed Counsel for respondent No.2 be quantified as per the rules.

(URMILA JOSHI-PHALKE, J.)