



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

CRIMINAL APPLICATION (BA) NO.865 OF 2024

Tiwariprasad s/o Paraslal Dasariya

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Salekasa and another

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

Court's or Judge's orders

Mr. V. R. Borkar, Counsel for the applicant.

Mr. S. V. Narale, APP for non-applicant No.1/State.

Mr. R. S. Bhalerao, appointed Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/10/2024

1. The applicant came to be arrested on 09.05.2024 in connection with Crime No.99/2024 registered with Police Station, Salekasa, District Gondia for the offences punishable under Sections 363 and 376 (3) of the Indian Penal Code and under Section 4(2) and 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'the POCSO Act').

2. Initially, the crime was registered on the basis of the report lodged by the grandfather of the victim girl on an allegation that his granddaughter aged about 15 years and 7 months left the house and not returned back. Though they have searched for her, but she was not found and therefore, they suspect that some unknown person has kidnapped

her. On the basis of the said report, initially police have registered the offence under Section 363 of the Indian Penal Code. During the investigation, the victim girl was traced and her statement was recorded from which it reveals that when she was attending the school, she got acquaintance with the present applicant, thereafter a love relationship was developed between them and out of that love relationship, there was a physical relationship between them. On the basis of the said statement, the Sections 376 of the Indian Penal Code as well as provisions of the POCSO Act are applied. The victim was referred for the medical examination and her statement under Section 164 of the Code of Criminal Procedure was also recorded. After completion of the investigation, the charge-sheet is filed against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the statement of the victim recorded under Section 164 of the Code of Criminal Procedure is concerned, which shows that she at her own accord left the house and she specifically stated that she has no complaint anybody, there was no sexual assault and no injuries are found on the person during the medical examination. Thus, considering the investigation is completed and charge-sheet is filed and now further incarceration of the present applicant is not required, he requested to release the applicant on bail.

4. Learned APP and learned appointed Counsel for the non-applicant No.2/victim strongly opposed the application and submitted that considering the age of the victim, her consent is not relevant. The statement of the victim recorded before the Investigating Officer shows that she was subjected for the sexual assault. If the applicant/accused is released on bail, he would tamper with the prosecution evidence and prayed for rejection of the application.

5. Having heard the learned Counsel for the applicant and learned APP for the State as well as learned appointed Counsel for the non-applicant No.2/victim, perused the investigation papers from which it reveals that the victim got acquaintance with the present applicant when she was attending the school and the love relationship was developed between them. The victim is 15 years 7 months girl, whereas the applicant is 21 years boy. Out of the relationship, a physical relationship was developed between them. Admittedly, the consent of the victim is not relevant but considering the fact that the alleged incident has not take place out of lust, but out of a love affair, two youngsters came together and the physical relationship was developed between them is required to be taken into consideration. Now it is settled that the offences which are the result of the love relationship between the teenaged to be considered differently. In view of that, the applicant

has made out a case for grant of bail. Considering that now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. The application deserves to be allowed by imposing certain conditions. In view of that, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Tiwariprasad s/o Paraslal Dasariya** shall be released on bail in connection with Crime No.99/2024 registered with Police Station, Salekasa, District Gondia for the offences punishable under Sections 363 and 376 (3) of the Indian Penal Code and under Section 4(2) and 6 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the village Khedepar, Sonpuri, Taluka Salekasa, District Gondia, till the culmination of the trial.
- (iv) The applicant shall attend the concerned Police Station once in a month on 15th of every month between 10.00 a.m. to 1.00 p.m. and the Investigating Officer shall record his presence.
- (v) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

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

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)