



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

CRIMINAL APPLICATION (BA) NO.887/2024

Rajat Laxmikant Kamble .Vs. State of Maharashtra through PSO P.S.
Hinganghat, Dist. Wardha.

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

Court's or Judge's orders

Mr. M. N. Ali, Advocate for applicant.
Mr. A. Madiwale, A.P.P. for non applicant No.1
Ms R. Mishra, Advocate for non applicant No.2.

CORAM : ANIL L. PANSARE, J.

DATE : DECEMBER 11, 2024

Heard.

2. This is the third application seeking bail. The application is filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (It ought to have been under Section 439 of the Criminal Procedure Code, 1973). In the previous attempts, when the Court was not inclined to grant relief, the applicant's counsel had sought permission to withdraw the application. The applicant was, however, granted liberty to approach the Trial Court afresh, after the informant is examined as prosecution witness. This order was passed on 30.01.2023. Counsel for the applicant submits that till date, the prosecution has not examined the informant.

Learned A.P.P. submits that though summons has been served upon informant (non applicant No.2), she has not appeared, maybe because she has gone to Hyderabad for studies.

3. The applicant is charge-sheeted for the offences punishable under Sections 376(2)(n), 376(3) and 506 of the Indian Penal Code, 1860 read with Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012. He has been arrested on 10.08.2022. He was, at the relevant time, 19 years old. He has no criminal antecedents. Counsel for applicant submits that it is unlikely that the informant will be examined in short period. In the aforesaid background, the application is heard afresh.

4. Statement of victim, if read with the statements of other witnesses, it appears that the applicant and the victim had indulged into consensual sexual activities. The victim was, at the relevant time, 15 years 6 months old. Therefore, her consent will be inconsequential.

5. It further appears from the statements of the victim and the other witnesses that the applicant, victim, victim's cousin sister with her boyfriend, had been to a hotel on couple of occasions, where both the couples indulged into sexual activities. The relationship between the applicant and the victim continued for about a year.

6. The statement of victim's father indicates that on 09.08.2022, he inquired with the victim about her cousin sister because she had fled away/missing from the town. The victim's father asked the victim to show her mobile to find out whether her cousin's photo appears with her friend. The victim refused to give the mobile. The father then inquired as to why she is

reluctant to show her mobile, to which the victim informed about her relationship with the applicant but was differently worded. The victim said that her consent was obtained by coercion. According to the victim, the applicant had taken her photographs and by threatening to make those photographs viral, he forced her to give consent. Thereafter, the father opened up the mobile to find photographs of the victim and the applicant.

7. This theory of obtaining consent by coercion has, however, been neutralized by the victim's relatives Swapnil and Shailesh. These witnesses have stated that they were present when the victim's father asked for victim's mobile. The witness said that the victim's father had seen the mobile and found photographs of victim with the applicant as also the exchange of messages between them and thereupon the victim narrated the story but with a rider that her consent was obtained under coercion. These witnesses have not stated that the victim refused or was reluctant to give mobile to her father. According to them, the victim's father had opened the mobile and found victim's photographs with applicant and also exchanged messages between the two. Thereupon the victim narrated the story.

8. The victim's version will have to be, therefore, understood in the background that it is a narration of story after her father seeing her photographs with the applicant as also the exchanged messages. In the circumstances, the possibility that

the victim has given different colour to the story cannot be ruled out, at least on the point of obtaining consent under coercion.

9. Learned A.P.P. as also the counsel appearing for the victim argued that the consent, if any, will be immaterial because the victim was a minor, aged 15 years 6 months and, therefore, no benefit could be extended to the applicant on this count.

10. True it is that the provisions of Protection of Children From Sexual Offences Act, 2012 does not recognize consensual relationship since the victim is a minor. At the same time, one cannot ignore the age of the applicant as well, who was just 19 years old. He has no criminal antecedents. The charge-sheet has been filed. He is in jail for last more than two years. The victim is not attending the Court despite service of summons. The question is, in a given set of facts, how long the liberty of a young man can be compromised.

11. Learned A.P.P. as also learned counsel for non applicant No.2, apprehend threat to the victim at the hands of the applicant as also his attempt to tamper with the prosecution witness. In fact, the victim has opposed the application on the count that if released on bail, the applicant may threaten the victim and her family members. The victim's counsel has filed a note, on instructions of the victim's father that two unidentified persons are roaming around the victim's house and he has suspicion that they are friends of the applicant.

12. This note carries no authenticity to jump to the conclusion that they are applicant's friends and are roaming around to pressurize the victim's family. The inference is drawn by the father on suspicion. He doesn't say that they have, at any point of time, threatened him or pressurized anyone or even attempted to do so. It is worth mentioning here that the victim is not even residing at her place. Presently she is residing at Hyderabad for her studies. Further, the applicant is also not resident of the same village. He is resident of Girad, District Wardha, which is 30 km. away from Hinganghat, District Wardha, where the victim is/was residing.

13. In the facts and circumstances and considering the fact that the prosecution failed to examine the victim for considerable period and further applying the principle that the person accused of committing crime is innocent until proven guilty, I am of the considered view that no purpose will be served by keeping the applicant behind the bars. The apprehension put forth by the prosecution and the victim can be dealt with by imposing appropriate conditions. Hence, following order is passed

ORDER

- (i) The application is allowed.
- (ii) Applicant – Rajat Laxmikant Kamble, be released on bail in Crime No.912/2022, registered with Police Station, Hinganghat, District Wardha for the offences punishable under Sections 376(2)(n), 376(3) and 506 of the Indian Penal Code, 1860 read with Sections 4 and 6 of the Protection of Children From Sexual Offences Act, 2012, on he

executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall regularly attend the Court and co-operate the learned Trial Court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the Trial Court.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned Trial Court shall be at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

Professional charges of Ms R. M. Mishra, learned appointed counsel for the non applicant no.2 shall be paid as per the rules.

(Anil L. Pansare, J.)