



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

CRIMINAL APPLICATION (BA) NO.918 OF 2023

(Kumesh s/o Rameshwar Madavi 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. A.S. Hastak, Advocate for the applicant.
Mr. V.A. Thakare, APP for the non-applicant/State.
Mr. A.R. Darunde, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 1, 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 27/01/2023 in connection with Crime No.322/2021 registered with Police Station Armori, District Gadchiroli for the offence punishable under Sections 363, 376, and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 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 father of the victim on an allegation that his daughter aged about 17 years and studying in 12th standard, left the house to attend the school and not returned back. Her friend has brought her books at home. He searched for her but could not found her. On the basis of said report, police have registered the crime against the present applicant initially under Sections 363 and 366 of the IPC. During investigation the

statement of the victim was recorded and the offence under Section 376(2)(n) of the IPC was registered against the present applicant.

3. Learned Counsel for the applicant submitted that from the statement of the victim it reveals that the victim herself has joined the company of the present applicant and stayed at various places as husband and wife and there was a physical relationship between them out of love affair. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the applicant was absconding for a considerable period. If he is released on bail he will not be available for trial and trial will be held up. He further submitted that the victim is only 17 years of age, her consent is not relevant whereas the applicant is 30 years man of a maturity. In view of that, the defence of the applicant that out of love affair, she joined the company, is not a reasonable ground and the application deserves to be rejected.

5. Learned Counsel for non-applicant No.2 endorsed the same contentions and prays for rejection of the application.

6. After hearing the learned Counsel for the parties and after going through the investigation papers,

especially the statement of the victim which shows that on the day of incident, she herself has left the college on the pretext that she has to attend the nature's call and not returned back. While leaving the school she asked her friend to handover her books at her home. She stayed along with the present applicant at various places and not made any grievance regarding forceful sexual assault or kidnapping at the hands of the present applicant. Thus, it reveals that the victim has joined the company of the present applicant at her own out of love affair and they stayed together and had a physical relationship out of that love relationship. The statement of the friend of the victim also supports the same.

7. Admittedly, the consent of the victim is not relevant. Now, the investigation is completed and charge-sheet is filed. Considering the statement of the victim, further incarceration of the present applicant is not required and application deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant - Kumesh s/o Rameshwar Madavi in connection with Crime No.322/2021 registered with Police Station Armori, District Gadchiroli for the offence punishable under Sections 363, 376, and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children

from Sexual Offences Act, 2012, be released on bail on furnishing 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 Kurandi (Chak), Taluka Armori, District Gadchiroli till culmination of the trial.

(iv) The applicant shall attend the Gadchiroli city police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. till culmination of the trial and the In-charge Police Officer shall record his presence.

(v) The applicant shall furnish his Cell phone number and address where he would reside after release on bail with address proof before the Investigating officer.

(vi) 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.

8. The application is disposed of.

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

(URMILA JOSHI-PHALKE, J.)