



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

CRIMINAL APPLICATION (BA) NO. 1029/2023

(Yashwant Jangu Ade Vs State of Maharashtra and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Fasihur Rahman Kashif, counsel for the applicant.

Mrs. M.A.Barbde, APP for the State.

Ms. Archana P. Murrey, counsel (appointed) for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 11/01/2024.

1. The applicant has preferred this application for grant of bail under Section 439 of the Code of Criminal Procedure, 1973, in connection with Crime No. 285/2023, initially registered Section 366 and subsequently filed under Section 363,354,366, 376(2) (n), 376(3) of the Indian Penal Code, 1860 and Sections 3,4,7 and 8 of the Protection of Children from Sexual Offences Act.

2. The applicant is arrested on 24/05/2023 and since then he is behind bar.

3. The accusations against the present applicant is on the basis of report lodged by mother of the victim, on an allegation that her daughter aged about 15 years was missing on 18/05/2023, though she searched for her, she could not found her and therefore, she suspected against the present applicant

and lodged the report. On the basis of the said report, the police have registered the crime against the present applicant.

4. During the investigation, the investigating officer searched for the victim thereafter, the victim was traced and her statement was recorded. It was revealed from her statement that, she was aged about 15 years old at the time of the incident and there was friendship between her, and the present applicant and they had a physical relationship out of the love affair. On the basis of said report, Police have registered the crime under Section 376 of the Indian Penal Code, 1860.

5. The learned counsel for the applicant submitted that was a love affair between the victim and the applicant and therefore, the victim herself left the house and joined the company of the present applicant. As far as the physical relationship is concerned, there is no material to show that there was a sexual relationship between them.

6. He further submitted that even if it is accepted, then they come together out of the attraction. The applicant is also a young age boy, and out of the love affair, they come together. Now, the investigation is completed and charge-sheet is filed,

further incarceration of the present applicant is not required.

7. He further submitted that along with the present applicant and other co-accused is already released on bail. Considering the fact that, out of love affair, the alleged incident has taken place and prays for releasing him on bail.

8. The learned APP strongly opposed the present application on the ground that the victim was only 14 years of age, at the time of first incident. Her consent is not relevant. If the applicant and another co-accused is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

9. The learned appointed counsel reiterated the same contention and opposed the present application.

10. After hearing learned counsel for the applicant, learned counsel for the informant, and learned APP for the State. Perused the recitals of the FIR which shows that, on 18/05/2023, as the victim was not found in the house, she was searched, and therefore, the report was lodged.

11. During the investigation, the Investigating Officer has recorded the statement of the victim girl.

From which it reveals that she was having love affair with the present applicant, and out of love affair, she went along with him, and there was a physical relationship between them. Thus, the incident appears to be happened out of the love relationship and out of the attraction towards each other. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. However, considering the apprehension raised by the prosecution that there is every chance of tampering the prosecution witnesses.

12. In that view of the matter, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

- a. The criminal application is **allowed**.
- b. The applicant – Yashwant Jangu Ade, in connection with Crime No. 285/2023 registered with Police Station Parwa, Tq. Ghatanji, District Yavatmal, for the offence punishable under Sections 363, 366, 354, 376(2)(n), 376(3) of the Indian Penal Code, 1860 along with Section 3,4,7 and 8 of the Protection of Children from Sexual Offences Act, the applicant be released on

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

- c. The applicant shall not enter into the vicinity of village Aayta Heti, Tah. Arni, District Yavatmal, till culmination of the trial.
- d. The applicant shall furnish his cell phone number(s) and address with address proof of where he resides after releasing him on bail before the trial Court.
- e. The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate in the investigation.
- f. The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.
- g. Fees of the learned counsel for the non-applicant No.2/Victim, be quantified as per the Rules.

[URMILA JOSHI-PHALKE, J.]