



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

CRIMINAL APPLICATION (BA) NO.2 OF 2024

Prakash s/o Netai Sardar

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Butibori, District Nagpur 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. B. H. Tekam, Advocate for applicant.

Mr. A. B. Badar, APP for respondent No.1/State.

Ms. M. S. Kotecha, appointed Advocate for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 11/03/2024

1. The applicant came to be arrested on 26.12.2022 in connection with Crime No.755/2022 registered with Police Station Butibori, District Nagpur for the offences punishable under Sections 376, 376(2)(n) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of a report lodged by the victim who is about 17 years of age. On an allegation that she got acquaintance with the present applicant, who is also resident of the same village. The friendship was developed between them which was resulted into the love affair. The present applicant promised her for marriage and subjected her for sexual assault which resulted into

her pregnancy. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that out of a love affair, there was a physical relationship between the applicant and the victim. Though consent is not relevant, but considering the fact that teenagers have developed a love relationship and out of that there was a physical relationship. Considering the same, the applicant be released on bail, as investigation is completed and charge-sheet is filed.

4. Learned APP strongly opposed the application on the ground that the victim was subjected for assault on the promise of marriage. The consent of the victim is not relevant, as she is below 18 years of age. If the applicant/accused is released on bail, he would tamper with the prosecution evidence. In view of that, the application deserves to be rejected.

5. Learned appointed Counsel for the respondent No.2 – victim endorsed the same contentions and placed reliance on **X (Minor) Vs. State of Jharkhand and Anr.** reported in **2022 LiveLaw (SC) 194** wherein the Hon'ble Apex Court held that having regard to the age of the prosecutrix

and the nature and gravity of the crime, no case for the grant of bail was established.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the recitals of the FIR. It reveals that FIR is lodged by the victim alleging that there was a love affair between her and the present applicant on the promise of marriage. The present applicant has subjected her for sexual assault and on the basis of the said report, police have registered the crime.

7. The statement of the victim is also recorded under Section 164 of Cr.P.C. Thus, from the recitals of the FIR and the statement of the victim, it reveal that out of a love affair, there was a physical relationship. Admittedly, the victim girl was on the verge of attaining the majority. From the recitals of the FIR, nowhere it reveals that since inception there was intention of the applicant to induce her or seduce her for sexual assault on the false promise. Whether there was a false promise or not, is a matter of evidence. At this stage, considering the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.

(ii) The applicant **Prakash s/o Netai Sardar** be released on bail in connection with Crime No.755/2022 registered with Police Station Butibori, District Nagpur for the offences punishable under Sections 376, 376(2)(n) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, 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 vicinity i.e. Gosavi Nagar, Butibori, District Nagpur, till the culmination of the trial.

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

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

(URMILA JOSHI-PHALKE, J.)