



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

CRIMINAL APPLICATION [BA] NO.343 OF 2024
(Avinash Sheku Aahake .vs. State of Maharashtra and one)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. T.W. Larokar, Advocate for Applicant,
Mr. Ganesh Umale, APP for Non-Applicant No.1-
State,
Mr. S.J. Kapse, Advocate for Non-Applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JUNE 26, 2024.

- . This is an application filed under Section 439 of the Code of Criminal Procedure for grant of bail.
2. The applicant came to be arrested on 23.09.2023 in connection with Crime No.307/2023 registered with Police Station, Shirajgaon, District - Amravati for the offence punishable under Section 363, 376 (2)(n), 506 of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.
3. Initially the crime was registered on the basis of the report lodged by the mother of the victim on an allegation

that on 02.09.2023 when she returned home in the afternoon, the victim girl was not at home, therefore, she enquired with and searched her, but the victim was not traceable. On the basis of the said report, initially the crime was registered under Section 363 of the Indian Penal Code. During investigation the victim girl was found along with the present applicant. Her statement was recorded. After recording her statement, the crime was registered under Section 376 (2)(n) of the Indian Penal Code.

4. Learned counsel for the applicant submitted that from the statement of the victim itself, it reveals that she was acquaintance with the present applicant which resulted into the love affair and therefore she herself left the house of her parents and joined the company of the present applicant. She travelled with the present applicant by the public transport and never shown her displeasure regarding the company of the present applicant or any force used by the present applicant. After she was found with the present applicant, her love affair was opposed by the parents and, therefore, the false report is lodged against the present applicant. Now the investigation is completed, charge sheet is filed, further incarceration of the applicant is not required and, therefore, he be released on bail.

5. Learned Additional Public Prosecutor strongly opposed the said application on the ground that the victim was 16 years of age at the time of incident. Her consent is not relevant. Against her consent, she was subjected for sexual assault and, therefore, prima facie case is made out and the application deserves to be rejected. Learned counsel for the victim also endorsed the same contentions.

6. After hearing the learned counsel for the applicant and the learned Additional Public Prosecutor for the non-applicant-state as well as the learned counsel for the victim, perused the investigation papers as well as the statement of the victim from which it reveals that victim, who is 16 years girl, was having acquaintance with the present applicant which resulted into the love affair. It further appears that she herself joined the company of the present applicant and travelled with the present applicant by the public transport. As far as the force used by the present applicant is concerned, she never shown any displeasure when travelled by public transport to anybody. She stayed with the present applicant at Ahmednagar District wherein also she has not disclosed the said incident to anybody. It is apparent that out of love affair, the alleged incident appears to be taken place. Out of love affair, they attracted towards each other and the physical relationship was developed between them. Now the

investigation is already completed, the charge sheet is filed, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) The applicant - Avinash Sheku Aahake shall be released on bail in connection with Crime No.307/2023 registered with Police Station, Shirajgaon, District - Amravati for the offence punishable under Section 363, 376 (2)(N), 506 of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 on his executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety of like amount.
- (iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (iv) The applicant shall attend the proceeding before the lower court without seeking any exemption unless there are exceptional circumstances.

7. The Criminal Application is disposed of.

JUDGE