



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

CRIMINAL APPLICATION (BA) NO. 1172 OF 2024

Mirza Farman Baig Mirza Zakir Baig

Vs.

State of Maharashtra, through PSO, P.S. Chandrapur City, Tah. & Dist. Chandrapur &
Anr.

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

Court's or Judge's orders

Mr. A.R. Wagh, Advocate for the Applicant.

Mr. N.B. Jawade, APP for Non-applicant No.1/State.

Ms. Gulafshan Ansari, Advocate appointed to represent the Non-applicant No.2.

CORAM : G. A. SANAP, J.

DATED : 21st JANUARY, 2025.

1. Heard the learned advocates for the parties.

2. The applicant has made this application for bail in Crime No.439/2024, registered with Police Station Chandrapur City, Tq. & Dist. Chandrapur for the offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860 (for short, "IPC") and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act").

3. Learned advocate for the applicant/accused submitted that the charge-sheet has been filed. The DNA report is awaited. The applicant/accused has been in jail since 22nd May, 2024. Learned advocate submitted that, on the date of the incident, the victim-girl was 17 years and 10 months old. She was capable to understand the consequences of her act. It was a consensual act. Learned advocate submitted that, during the

pendency of the trial, further incarceration of the applicant/accused is not necessary. He is ready to abide by the conditions that may be imposed by this Court.

4. Learned APP opposed the application. It is submitted that when the report was lodged, the victim-girl was 3 to 4 months pregnant. The fetus was aborted. The DNA report is awaited. There is concrete evidence against the applicant/accused. If the applicant/accused is released on bail, the possibility of tampering with the prosecution evidence cannot be ruled out.

5. Learned advocate appointed to represent the non-applicant No.2 has filed an affidavit. The victim-girl is present before the Court with her mother. The victim-girl, in her affidavit, has stated that she has no objection for grant of bail to the applicant/accused.

6. I have gone through the record and proceedings. As noted above, the victim-girl was around 17 years and 10 months old. It is the defence of the applicant/accused that it was a consensual act. As far as this defence is concerned, the same cannot be accepted. However, the fact remains that the victim-girl was sufficiently capable to understand the consequences of her act. It appears that the applicant/accused is her distant relative. The investigation is over. Further detention of the applicant/accused is not necessary for custodial interrogation. The DNA report is awaited. The trial may take its own time for conclusion.

7. The victim-girl has given no objection by filing an affidavit. The fetus was aborted. The mother of the victim-girl is present with the victim. Learned advocate for non-applicant No.2 submits that her mother has also no objection for grant of bail to the applicant/accused.

8. In view of this factual position, I do not see any reason to reject the bail application. The apprehension put-forth by the learned APP can be taken care of by imposing appropriate conditions. Hence, the following order:

ORDER

i] The application is **allowed**.

ii] The applicant/accused – Mirza Farman Baig Mirza Zakir Baig be released on bail in Crime No.439/2024, registered with Police Station Chandrapur City, Tq. & Dist. Chandrapur for the offences punishable under Sections 376(2) (n) and 506 of the IPC and under Sections 4 and 6 of the POCSO Act, on his furnishing P.R. bond in the sum of Rs.20,000/- (Rs. Twenty Thousand) with one surety in the like amount.

iii] The applicant shall not, in any way, tamper with the prosecution evidence.

iv] The applicant shall not pressurize or threaten the prosecution witnesses.

v] The High Court Legal Services Sub-Committee, Nagpur, shall pay the fees to the learned advocate appointed to represent the non-applicant No.2, as per Rules.

vi] The application stands disposed of in the above terms.

(G. A. SANAP, J.)

Vijay