

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

...

CRIMINAL APPLICATION (BA) NO. 69/2023

Akshay s/o Anil Waghade

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Rahimapur Tq.Anjangaon Surji

Dist. Amravati and another

.. Respondents

.....
Mr. Y.P. Bhelande, Advocate for the applicant

Mr. S.M.Ghodeswar, APP for Respondent No.1

Ms. Falguni Badani, Advocate (appointed) for Respondent No.2

.....

CORAM: ANIL L. PANSARE, J.

DATED : 20th March, 2023.

PC:

Criminal Application (BA) No.1434/2022 is de-tagged.

2. Heard learned counsel for both the sides.

3. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 29.07.2022 in Crime No.148/2022 registered at Police Station Rahimapur, District: Amravati, for the offences punishable under Sections 376, 376(3), 354(A), 354 (C), 506 of the Indian Penal Code; Sections 4 and 12 of Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") and Section 67 of the Information and Technology Act, 2000.

4. Mr. Y.P. Bhelande, the learned counsel for the applicant has invited my attention to the statement dated 02.08.2022 of the

Respondent No.2/victim. She states that she was in a relationship with Sagar Sanjay Nemade for the last one month. On 19.07.2022, the said Sagar and the victim indulged in sexual activity. She then states that Sagar was well aware that she was 15-years old. The victim after having indulged in sexual activity, made an attempt to open the door of the room but it was bolted from outside. She therefore knocked the door from inside; three persons namely, Ajay Raibole, Vaibhav Mankar and Akshay Waghade (the present applicant) opened the door. At that time, Ajay told her that he has recorded the video of the physical activities indulged into by Sagar and the victim. On 20.07.2022, Ajay insisted for sexual favour from the victim by threatening her of making the video viral. On 21.07.2022, Ajay once again demanded sexual favour. In the evening, the present applicant- Akshay, too made a similar demand by threatening to make the video viral. Later on, Ajay showed video to the mother of the victim and thereafter the report was lodged.

5. Considering the role assigned to the applicant, *prima facie*, the provisions of Sections 376, 376(3) of the IPC may not be attracted, so also Section 4 of the POCSO Act. What remains then is the offences punishable under sections 354(A), 354(C), 506 of the IPC and Section 12 of the POCSO Act. Sections 354(A) and 354(C) are bailable offences. The maximum punishment for the offence alleged is three years. The applicant is behind the bars since 29.07.2022.

6. The charge-sheet has been filed. The charge has not yet been framed. It will take time to commence and conclude the trial. In the circumstances and considering the peculiar facts and circumstances of the case and the accusation against the applicant, so also the

presumption that the person accused of a crime is considered innocent until proven guilty, in my considered view, no fruitful purpose will be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

7. The observations made herein-above are for the purpose of deciding this Application only, and the trial Court shall not get influenced by it. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Akshay Anil Waghade, be released on bail, in Crime No.148/2022 registered at Police Station Rahimapur, District: Amravati, for the offences punishable under Sections 376, 376(3), 354(A), 354 (C), 506 of the Indian Penal Code; Sections 4 and 12 of Protection of Children from Sexual Offences Act, 2012 and Section 67 of the Information Technology Act, 2000, on he furnishing P.R. bond in the sum of Rs. 25,000/- (Rupees twenty five thousand) with one surety in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the mobile number(s) and the residence till the final disposal of the case.
- (iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so

as to dissuade him from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) The applicant shall not contact the victim/ Respondent No.2 in any manner.

(viii) In case of breach of any condition, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

8. The professional fees of Ms.Falguni Badani, Advocate (appointed) be quantified and paid as per the Rules.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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