

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

...

CRIMINAL APPLICATION (BA) NO. 27/2023

Sagar Sanjay Nemade

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS, Rahimpur Tq. Anjangaon Surji

Dist. Amravati and another.

.. Respondent/s

.....
Mrs. S.S. Jadhav, 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 : 13th March, 2023.

PC:

Heard learned counsel for both the sides, at length.

2. 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 Rahimpur, 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 57 of the Information Technology Act, 2000.

3. Mrs. S.S. Jadhav, 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 relationship with the applicant for last one month. On 19.07.2022, the applicant and the victim indulged in sexual activity. She then states that the applicant 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 opened the door. At that time, Ajay told her that he has recorded the video of the physical activities indulged into by the applicant 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, Akshay also 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.

4. The learned counsel for the applicant accordingly contends that the victim would not have lodged the report had the video been not shown by Ajay to the victim's mother. She further submits that the physical relations, if any, was consensual. The applicant is 24 years old and has no criminal antecedents.

5. The learned APP as well as the learned Advocate appointed for the respondent No.2/victim, however, contends that the consent is insignificant since the victim is a child, as defined under the provisions of the POCSO Act.

6. True, it is that the victim is a child but then one cannot ignore the fact that the victim had attained the age of sexual maturity and is aware of the sexual activities she had indulged into. It is not nobody's case that the applicant has taken advantage of the age of the

victim. It is also not the case of the prosecution that the applicant is responsible, in any manner, for taking the video by the co-accused.

7. 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, 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.

8. 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-Sagar Sanjay Nemade, be released on bail, in Crime No.148/2022 registered at Police Station Rahimpur, 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 57 of the Information Technology Act, 2000, on he furnishing PR. 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.]