

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

CRIMINAL APPLICATION (BA) NO. 193 OF 2023
(Sanjay Krishnapad Halder V/s The State of Maharashtra)

Office Notes, Office Memoranda of Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. D. R. Galande, Advocate for Applicant.
Mr. I. J. Damle, APP for Non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 3, 2023.

. Heard learned Counsel for the parties.

2. By this Application, the Applicant is seeking bail under Section 439 of the Code of Criminal Procedure, 1973 (*In short, 'the Code'*).

3. The Applicant has been arrested on 11/8/2022 in Crime No. 43/2022 registered with Police Station, Mulchera, District Gadchiroli for the offences punishable under Section 376, 506 of Indian Penal Code and Section 67(A) of the Information Technology Act.

4. Having heard both sides it appears that the FIR has been lodged on 10/8/2022 by the victim, who was about 19 years

old. She states that the Applicant and the victim were in relationship. The parents of the victim came to know about the relationship. They instructed the victim not to speak to the Applicant. Despite such instructions, the victim used to talk to the Applicant. In January-2022 victim went to reside with her maternal uncle at Bhavanipur. The victim informed him that she is staying at Bhavanipur. The Applicant disclosed to her that he would come at the place where the victim is residing. The Applicant came there and called victim at Bhavanipur Bus Stand. The Applicant and victim proceeded to the forest on motor-cycle. The Applicant and the victim indulged into sexual intercourse. The victim further states that the Applicant threatened her by saying that if the victim does not allow him to satisfy him, he will commit suicide. The Applicant thereafter left the victim near her maternal uncle's home.

5. After some days, the victim's closed associate informed her that the Applicant has bad habits, he consumes alcohol and asked her how can she make friendship with the Applicant. The victim then informed the Applicant not to keep the relationship, to which the Applicant said that he was, even otherwise not willing to marry and that his work has already been done. The victim has then stated that after couple of hours the Applicant came to the house of victim's parents and threatened them that if she does not marry him, he will commit suicide. The parents, therefore, sent the victim to Gondia for further studies. The Applicant was insisting

for physical relationship, therefore, the victim narrated the earlier incident to her parents. That is how, the FIR came to be lodged.

6. The learned APP submits that the Applicant and the victim were in relationship. The victim was forced to commit sexual intercourse, and therefore, the offence under Section 376 of Indian Penal Code is made out.

7. As against, the learned Counsel for the Applicant has invited my attention to the statement of the victim before the Medical Officer Dr. Samiksha Poreddiwar, Gadchiroli, who conducted the medical examination. While recording the statement, the victim informed the Doctor that the Applicant and the victim were in relationship for two years. They used to meet each other. Both had willingly indulged into sexual activities. Last such incident has occurred one year back. The learned Counsel, therefore, submits that the ingredients of Section 376 of Indian Penal Code will not be attracted.

8. The learned APP has, however, then invited my attention to the supplementary statement of the victim recorded on 15/8/2022. In the statement, apart from the fact that victim said that she was forced to give consent for sexual intercourse, she had stated that her obscene video was made viral. The prosecution claims that the video was made viral by the Applicant.

9. Thus, it appears that the victim and the Applicant were in relationship. The parents of the victim came to know of

such relationship. They instructed the Applicant not to speak with the Applicant. Despite this, the victim used to talk to Applicant. They indulged into sexual activities. Though the victim has given twist to her statement that she was forced to give consent for sexual intercourse, her statement before the Doctor, while narrating the incident, states that they had consensual sex. The history also indicates that last such activity was performed one year back. Thus, the victim was silent for substantial period. It appears that she has later changed her mind on getting knowledge that the Applicant has some bad habits. The Applicant persuaded his proposal for getting married and in doing so, threatened the victim and her parents. The threatening was of making video viral, infact the video appears to have been made viral. The mobile has been recovered from the father of the Applicant.

10. Though the learned Counsel for the Applicant contended that there is no evidence to show that the Applicant has taken obscene video, the circumstances indicates that the Applicant might have made a video viral, however, even if the said fact is accepted, the Applicant could be blamed for the offence punishable under Section 67(A) of Information Technology Act. On the point of offence under Section 376 of Indian Penal Code, the prosecution has a challenging task, considering the version of the victim. Nonetheless, the prosecution will get opportunity to put-forth its version through the victim and other witnesses on the allegations of committing offence under Section 376 of Indian

Penal Code, which will be tested by the defence in cross-examination.

11. At present, considering the nature of evidence as described herein above, as also the presumption that the person accused of commission 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 the prosecution can be protected by putting the Applicant to appropriate terms.

12. The chargesheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial. When enquired, learned Counsel for the Applicant submits that there are no criminal antecedents against the Applicant. The Applicant is residing at the given address since long.

13. The observations made in this order are *prima facie* and are made for deciding the present Application only. The learned trial Court shall not get influenced by the above observations.

14. Resultantly, following order is passed.

ORDER

(i) Criminal Bail Application is allowed.

- (ii) The Applicant – Sanjay Krishnapad Haldar be released on bail in Crime No. 43/2022 registered with Police Station, Mulchera, District Gadchiroli for the offences punishable under Section 376, 506 of Indian Penal Code and Section 67(A) of the Information Technology Act, on he executing PR Bond in the sum of Rs. 50,000/- with one or two sureties 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 same till the final disposal of the case.
- (iv) 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/her from disclosing such facts to the Court or any Police Officer.
- (v) The Applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence.
- (vi) The Applicant shall maintain law and order.
- (vii) The Applicant shall not contact the victim and her parents 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.

Criminal Application is disposed of accordingly.

(ANIL L. PANSARE, J.)

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