

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

...

CRIMINAL APPLICATION (BA) NO. 195/2023

Aadarsh s/o Dnyaneshwar Bhandarkar

.. Applicant

versus

State of Maharashtra

Through Its PSO PS Shantinagar, Nagpur.

.. Respondent

.....
Mr. S.P. Sonwane, Advocate for the applicant

Mr.S.M.Ghodeswar, APP for the Respondent -State
.....

CORAM: ANIL L. PANSARE, J.

DATED : 10th 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 04.02.2023 in Crime No.38/2023 registered at Police Station Shantinagar, Nagpur, for the offences punishable under Section 67(B) of the Information Technology Act and Sections 15(1) & 15(3) of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO")

3. Briefly stated, the case of the prosecution is that a video of two naked minor children, of which one was seen inserting his finger into other's anus, was seen by National Centre of Missing and Exploited Children. A tip was accordingly given on 04.02.2023 to the Investigating agency. It was revealed after seeing the video on 26.12.2020 during 13:40:30 that the possessor of suspected mobile No. 919595170092, has

uploaded the video on Instagram Account. This mobile number, according to the prosecution, is of the present applicant. Thus, the fact of uploading the video is discovered on 04.02.2023.

4. Section 15(1) of POCSO provides for punishment of fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees; whereas Section 15(3) provides for punishment for the first offence, which shall not be less than three years, which may extend to five years. Sec.67(B) of Information Technology Act provides for punishment for the first offence upto 5 years so also with fine.

5. The applicant is 29-years old. He claims innocence. His mobile phone has already been seized on 04.02.2023 and, as such, by now, the investigation ought to have been completed. Nothing is to be recovered from him or at his instance.

6. When enquired, the learned counsel for the applicant submits that there are no criminal antecedents against the applicant. The applicant is residing at the address given for a long time and is serving in a private company, since last seven years.

7. Considering the nature of allegations and since nothing is to be recovered from the applicant, in my considered view, no fruitful purpose will be served by keeping the applicant behind the bars. The interests of the prosecution can be protected by putting the applicant to appropriate terms.

8. Needless to mention, that 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-Aadarsh s/o Dnyaneshwar Bhandarkar, be released on bail, in Crime No.38/2023 registered with Police Station Shantinagar, Nagpur, for the offence punishable under Section 67(B) of the Information Technology Act and Sections 15(1) & 15(3) of the Protection of Children from Sexual Offences Act,2012, 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 attend the concerned Police Station on every alternate Sunday between 2.00 to 5.00 pm. till filing of the charge-sheet.
- (iv) 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.
- (v) The applicant shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the Police.
- (vi) 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.
- (vii) The applicant shall maintain law and order.
- (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.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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