



IN THE COURT OF SPECIAL JUDGE, GONDIA.

SPECIAL CASE NO.43/2023.
CNR No.MHGO010004692023.

STATE OF MAH. VS. PRAKASH SHARMA.

ORDER BELOW EXH.10.
(Passed on 9th May, 2023)

The applicant/accused by name **Prakash S/o Bansilal Sharma** by this application under Section 439 of the Code of Criminal Procedure prays for regular bail in Special Case No.43/2023 (Crime No.381/2022) registered with Gondia City Police Station, District Gondia under Sections 376, 376(2)(n) of The Indian Penal Code, 1860 and Sections 5 read with Section 6 of The Protection of Children from Sexual Offences Act.

2. Perused the application and say filed by Learned APP at Exh.14, say filed by Investigating Officer at Exh.15 and say filed by victim at Exh.17.

3. From the contents of FIR, it reveals that, in May 2015 victim was of 16 years of age. She had been to Gondia along with her maternal uncle and his wife to the house of friend of her maternal uncle. At that time, applicant/accused also came to Gondia. Applicant/Accused and victim are distant relatives of each other. In May 2015, applicant/accused took victim to one Premier Hotel, Gondia, offered her cold-drinks wherein intoxicants were mixed. Then after made physical relations with victim.

Applicant/Accused threatened victim and assured her that he will marry with her. Then after for several times, applicant/accused made physical relations with victim and was blackmailing her. In the year 2018, the family members of victim were intending to lodge complaint, however on 18/01/2018, there were engagement between applicant/accused and victim. Applicant/Accused also demanding nude photos from victim and threatening her that if she couldn't send nude photos, he will commit suicide. After engagement with victim, again for several times applicant/accused made physical relations with her. On 09/12/2021 also applicant/accused made physical relations with victim at Om Lodge, Raipur. In January 2022, victim was pregnant of one month and she was of 22 years of age. At the say of applicant/accused, there were abortion. On 26/01/2022, applicant/accused sent two photographs of his engagement with Divya Sharma to victim on WhatsApp. Then after on 25/02/2022 present complaint came to be lodged.

4. From the contents of application, it reveals that, complaint is lodged on false and frivolous averments. On 18/01/2018, there were engagement between applicant/accused and victim. Applicant/Accused transferred various amount to victim. On 26/01/2022 after 04 years when family members of complainant did not give any confirmation regarding date of marriage, applicant/accused made his engagement. The charge-sheet was filed against applicant/accused under Section 299 of Cr.P.C. However, he was not having any knowledge as to the registration of offence. No prima-facie case is made out against

applicant/accused. FIR is registered to blackmail him. After 07 years of first alleged incident, FIR has been registered. On the date of lodging of FIR, victim was major. During investigation, no nude photographs of victim were seized. Applicant/Accused is ready to abide any condition, if so imposed on him and will not misuse his liberty in any manner.

5. From the say of Learned APP at Exh.14, it reveals that, if applicant/accused is released on bail, then the possibility cannot be ruled out that he will pressurize the witnesses. Further possibility of his absconding cannot be over ruled.

6. From the say of Investigating Officer at Exh.15, it reveals that, victim and applicant/accused are relatives of each others. If he is released on bail, possibility cannot be ruled out that he will pressurize the victim and witnesses. Further possibility of his absconding cannot be ruled out.

7. From the say of victim at Exh.17, it reveals that, applicant/accused used to threaten her and her family members of dire consequences.

8. From the say of father of victim at Exh.16, it reveals that, applicant/accused used to threaten the family members of victim.

9. I have also gone through the documents filed by applicant/accused along with list Exh.11. Document at Exh.11/1 is letter allegedly written by victim dated 8th April 2019 to applicant/accused. Document at Exh.11/2 are photocopies of

photographs of applicant/accused and victim. Document at Exh.11/3 is photocopy of account extract of applicant/accused. Document at Exh.11/4 is photocopy of sale deed.

10. According to victim, when first incident had been taken in May 2015, she was of 16 years of age. Applicant/Accused offered cold-drink to her in Premier Hotel, Gondia. Intoxicant was mixed in cold-drink. Applicant/Accused made physical relations with her, snapped her naked videos, blackmailed her on that count and made physical relations with her from time to time. On 18/01/2018, there were engagement between applicant/accused and victim. Then after also on 09/12/2021 applicant/accused made physical relations with victim at Om Lodge, Raipur. In January 2022, victim was pregnant of one month. At the instance of applicant/accused, victim made abortion.

11. From the medical report of victim, it reveals that, she stated history that there were sexual intercourse many times in last 07 years. From the medical report and opinion of Medical Officer who examined victim, it reveals that, victim was sexually active. However, there is no injury mark and no history of recent sexual activity. Said medical report is dated 24/02/2022.

12. I have also gone through the statement of victim, her brother dated 07/07/2022. From the statement of brother of victim, it reveals that, applicant/accused sent nude photographs of victim to him on WhatsApp and applicant/accused was blackmailing victim and her family members that he would make those nude photographs viral. I have also gone through the

statement of victim under Section 164 of Cr.P.C. Statement of victim under Section 164 of Cr.P.C. indicates that on 26/01/2022, applicant/accused sent two photographs of his engagement on the WhatsApp of victim and threatened victim to make her nude photographs viral.

13. True that, charge-sheet was submitted against applicant/accused under Section 299 of Cr.P.C. Then after applicant/accused was arrested, produced before the Court and now behind bar.

14. The first alleged incident according to the victim had been taken place in May 2015 when victim was of 16 years of age. From the record, it reveals that, on 18/01/2018, there were engagement between victim and applicant/accused. However, their marriage could not have been performed for whatsoever reason it may be.

15. From the record, it further reveals that, on 26/01/2022, applicant/accused sent photographs of his engagement to victim on WhatsApp and then after on 25/02/2022, complaint came to be lodged against applicant/accused. According to the case of prosecution and from the statement of victim and her brother, it reveals that, applicant/accused was sending nude photographs to victim and her brother. However, during investigation, the cell phone of victim, her brother, applicant/accused have not been seized by the concerned Investigating Officer for the reason best known to him.

16. According to the case of prosecution, from May 2015 to

the end of December 2021, there were physical relations between applicant/accused and victim. Though for the sake of argument, it is accepted that, when initial physical relations between victim and applicant/accused had been taken place, at that time, victim was child, however fact remains that after being major, victim continued physical relations with applicant/accused either due to assurance of marriage and there were engagement between both of them on 18/01/2018. If the date of lodging of complaint is considered i.e. 25th February 2022, it can be said that approximately after 07 years of first incident, complaint came to be lodged. In the case at hand, it reveals that, on 26/01/2022, applicant/accused sent two photographs of his engagement to victim on WhatsApp and then after on 25/02/2022, complaint came to be registered against him.

17. From the record, it reveals that, victim is resident of Raipur, State Chhatisgarh. Whereas, applicant/accused is resident of Jaipur, State Rajasthan. The investigation has been completed and charge-sheet has been submitted. Applicant/Accused is behind bar. To my mind, no purpose would be suffice by keeping the applicant/accused behind bar for uncertain period if otherwise he is entitled to get bail. Definitely some period is required for commencement of trial. To my mind, applicant/accused cannot be kept behind bar for uncertain period and if some conditions are imposed on applicant/accused, that would suffice the purpose.

18. Considering the nature of offence, punishment provided for it, considering the unexplained delay in registration of FIR, keeping in mind that after engagement of

applicant/accused with another lady, present complaint came to be registered, further keeping in mind that charges-sheet has been filed, I am of the view that applicant/accused has made out the case to exercise the discretion and to release him on regular bail by imposing some conditions on him. Hence, I proceed to pass following order.

ORDER

1. The application (Exh.10) for regular bail is hereby allowed.
2. The applicant by name **Prakash S/o Bansilal Sharma** be released on regular bail on executing P.B. of Rs.50,000/- and solvent surety of like amount in Crime No.381/2022 registered with Gondia City Police Station, District Gondia under Sections 376, 376(2)(n) of The Indian Penal Code, 1860 and Section 5 read with Section 6 of The Protection of Children from Sexual Offences Act, 2012, on the following conditions:
 - (a) Applicant is directed not to misuse his liberty in any manner.
 - (b) Applicant/Accused shall not tamper with the evidence.
 - (c) Applicant/Accused shall not directly or indirectly make any inducement, threat or promise to the victim and her family members and not to make any contact with them directly or indirectly in any manner.
 - (d) Applicant/Accused shall not commit any offence against victim.
 - (e) Applicant/Accused is further directed not to viral any objectionable photographs of victim on any social media due to which victim may be defamed.

- (f) Applicant/Accused is directed to attend the Court regularly.
- (g) If there is breach of any of the condition mentioned above, prosecution is at liberty to file necessary application for cancellation of bail of applicant/accused.

Sd/-

Date: 09.05.2023.

(N. D. Khose)
Special Judge, **Gondia**.