

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

**CRIMINAL APPLICATION (BA) NO.1413/2022**

Vivek alias Akash Sanjay Khadase .vs. State of Maharashtra through its PSO P.S.  
Darwha, Dist. Yavatmal and another.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

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Mr. I. Sharma, Advocate for applicant.  
Mr. A. M. Kadukar, A.P.P for non applicant no.1-State.  
Ms M. Sharma, Advocate appointed for non applicant no.2.

**CORAM : ANIL L. PANSARE, J.**  
**DATE : FEBRUARY 28, 2023.**

This is an application under Section 439 of the Code of Criminal Procedure, 1973, The applicant has been arrested on 15.04.2022 in Crime No.338/2022, registered with Police Station, Darwha, Dist. Yavatmal for the offences punishable under Sections 363, 366-A, 376(2)(n) of the Indian Penal Code, 1860 and Section 4 of the Protection of Children From Sexual Offences Act, 2012.

2. The accusation against the applicant is that he has kidnapped a minor girl aged 17 years and has committed rape. However, statement of the victim recorded on 15.04.2022, would clearly indicate that the victim and applicant have left to Pune on 11.04.2022. Both have left without informing their parents. The parents of the victim have, therefore, lodged report of missing. The victim came to know of such report and therefore spoke with her father on mobile and informed him that they will return back. The victim has then stated that she has willingly went with applicant. She has not been kidnapped. She was with the

applicant for the period from 11.04.2022 to 15.04.2022. She has then stated that they did not indulge into any physical activity. She has no complaint against anyone.

3. Learned A.P.P. however has made an attempt to make out a case by referring to the statement of victim recorded under Section 164 of the Code of Criminal Procedure. The statement has been recorded on 26.04.2022. The victim has stated altogether different story and blamed the applicant for kidnapping so also for rape.

4. The applicant was 22 years old and the victim was 17 years 5 months old, at the relevant time. The victim can be said to have attained sexual maturity. The discrepancy in the statements of the victim will ultimately be advantageous to the applicant.

5. When inquired about antecedents, learned counsel for the applicant submits that the applicant has no criminal antecedents. He is residing at the address since his birth. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. In view of above and considering the nature of evidence, no purpose will be served by keeping the applicant behind the bar. Hence, following order is passed.

### **ORDER**

- (i) The application is allowed.
- (ii) Applicant-Vivek alias Akash Sanjay Khadse be released on bail in Crime No. 338/2022, registered with Police Station,

Darwha, Dist. Yavatmal for the offences punishable under Sections 363, 366-A, 376(2)(n) of the Indian Penal Code, 1860 and Section 4 of the Protection of Children From Sexual Offences Act, 2012 on he executing PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(iii) 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.

(iv) The applicant shall maintain law and order.

(v) 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 residence and mobile number(s) till the final disposal of the case.

(vi) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vii) In case of breach of any conditions, 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.

Fees of Ms. M. Sharma, learned appointed advocate for non applicant no.2-victim is shall be paid as per the rules.

**(Anil L. Pansare, J.)**