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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 283 OF 2022

Indrajeet @ Ajay Ananda Kumbhar .. Applicant

Vs.

The State of Maharashtra & Anr. .. Respondents

.....

Mr. Sanjeev Kadam a/w Dinesh W. Bhosale for the applicant

Mr. A.A. Palkar, APP for the respondent – State

Mr. Balasaheb Ligade for the respondent no.2

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

Closed on : 22nd April, 2024

Pronounced on : 26th April, 2024

P.C.

1. By this application, the applicant seeks his release on bail, who has been arrested by Sangola Police Station, Dist. Solapur in connection with C.R. No.560 of 2021 for the offence punishable under Sections 376(3), 354(A), 504, 506 of the Indian Penal Code and Sections 4, 8, 10, 12 and 42 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act').

2. The prosecution case, in brief, can be stated as under.

3. The victim was a 12 years old child studying in 7th standard at Sangola. During the summer vacation of April 2021, the victim had been to her Aunt's place at Tal. Atpadi, Dist. Sangli. She stayed there for a month. The applicant is the cousin of Aunt of the victim. During her stay at her aunt's house, the applicant used to show her pornographic clips on his mobile. He used to kiss her. When the victim informed about the conduct of the applicant to her mother, the mother of the victim (first informant) and her husband brought her home on 24.04.2021. Upon being asked, the victim informed her parents that since January 2020, the applicant had shown her obscene and pornographic clips on his mobile on several occasions. He used to inappropriately touch her body, including her breast and vagina. He also used to kiss her, forcibly.

4. It is alleged that on one occasion, the applicant took her in the field for swimming into a pond. He forced her to remove the clothes. When she refused, he abused her. Sometimes, he used to take her on his motorbike and then he used to touch her inappropriately. It is alleged that on one night when she was sleeping in the house, the applicant gagged her mouth and after showing pornographic clips from his mobile phone, removed her

clothes as well as pant of the victim and attempted to commit penetrative sexual assault. He repeated the same thing again on the second night.

5. A report came to be lodged against the applicant. The Investigating Officer recorded the statement of the victim as well as her parents. The victim was referred for medical examination. Her statement came to be recorded under Section 164 of the Cr.P.C. by the JMFC, Sangola. The clothes of the victim as well as the applicant were forwarded for chemical analysis to the Forensic Science Laboratory. After investigation, a charge-sheet was filed.

6. The applicant has failed in his first attempt to secure bail from the trial Court and, therefore, he approached this Court.

7. I heard Mr. Kadam, learned Counsel for the applicant, Mr. Palkar, learned APP and Mr. Ligade, learned Counsel for the respondent no.2.

8. At the outset, Mr. Kadam would argue that the applicant has been falsely implicated in this case due to some family dispute as the parties are related. It is submitted that the applicant was arrested

by the police, from the pendal of the marriage when his marriage was about to be solemnized, which indicates that it was a well planned action on the part of the first informant and her family. There is a delay in lodging an FIR for which there is no explanation. The applicant has been incarcerated for nearly 3 years with no antecedents at his dis-credit and, therefore, he prayed for his release on bail.

9. Learned APP, on the other hand, strongly opposed the application for bail by inviting my attention to not only the statements of the victim under Sections 161 and 164 of the Cr.P.C. but also the answers given by her to question nos. 7, 8, 9 and 10.

10. Learned Counsel for the victim argued that Section 4 provides life imprisonment and, therefore, looking to the manner in which the applicant had committed the offence by taking disadvantage of a small child, who had been to her relative's house, does not deserves to be released on bail. He invites my attention to page no.45 and 45C indicating as to how the applicant had molested the victim even at her parent's house.

11. The statement of the first informant and the mother of the

victim indicates that the applicant had committed penetrative sexual assault after showing pornographic videos to the victim which began in the month of January 2020. He continued in his illegal activities even thereafter on several occasions by inappropriately touching the private parts of the victim and also forcibly trying to exploit her. Normally, in such cases, the delay is quite natural as there is a question of prestige and reputation of the family which is at stake. The law is well settled on this point.

12. The Medical Certificate of the victim at page 34 reveals that she was examined by the Medical Officer on 20.05.2021. The medical report does not indicate any injuries to the genitals, cheeks, lips and thighs of the victim. Merely because there were no injuries does not *ipso facto* mean that there was no penetrative sexual assault in view of the definition of penetrative sexual assault as provided in Section 3(a) (b) of the POCSO Act, which reads thus :-

“3. Penetrative sexual assault.- A person is said to commit “penetrative sexual assault” if -

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person;

13. Penetration of the penis to any extent would constitute an offence of penetrative sexual assault. The law does not contemplate that there should be full insertion or injuries to the private part of the victim. Mere touching of the penis to the private part of the victim constitutes an offence under Section 4 of the POCSO Act in view of the definition of “penetrative sexual assault” provided in Section 3(a) and 3(b) of the Act. While defining the offence of rape, it is held by the Supreme Court in case of **State of Uttar Pradesh vs. Babul Nath (1994) 6 SCC 29** that in order to constitute of an offence of rape, it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt of penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of the IPC. Keeping in mind this position, it cannot be said that the allegations against the applicant are totally concocted or false. The applicant had molested and

exploited the victim which indeed constitutes offence not only under the POCSO Act but also under the provision of I.P.C.

14. Learned Counsel for the applicant has failed to substantiate as to why and how the applicant has been falsely implicated as has been sought to be argued. Rather, when the victim was questioned by a member of Woman Vigilance Committee, while answering question no.7, 8, 9 and 10, the victim states as below :-

प्रश्न क्रं.		
७.	प्रश्न उत्तर	काय झाले होते? मी माझी सुनंदा मावशी हिच्याकडे सुट्टीला एप्रिल २०२१ महिन्यात गेली होती. मी बरेच दिवस तेथेच राहणेस होती. तेव्हा मी माझी सुनंदा मावशी हिला सांगितले कि, आमच्या अत्याचा मुलगा इंद्रजीत याने मला मोबाईलमधील व्हिडिओ दाखवून राहते. आत्याचे घरी व आमच्या घरी तिचे चुंबन घेतले आहे. असे मी मावशीला सांगितले तेव्हा सुनंदा मावशी हिने माझे आई व बाबांना सांगितले व ते सुनंदा मावशीच्या घरी करगणी येथे आले व इंद्रजीत याने काय केले आहे असे विचारले तेव्हा मी घाबरलेली होती व मी त्याचे सोबत आमचे सांगोला येथील घरी आले नाही. मी सुनंदा मावशीच्या घरीच थांबले.
८.	प्रश्न उत्तर	त्यानंतर परत काय झाले? त्यानंतर काही दिवसांनी माझे आजोबा यांनी आमचे सांगोला येथे घेवून जाणे करिता आले व मी त्यांचेसोबत आमच्या घरी आले. तेव्हा मला माझे आई, बाबांनी समजावून सांगून इंद्रजीत याने काय केले आहे. तेव्हा मी त्यांना सांगितले कि, मी आत्याचे घरी दोन तीन दिवस होते तेव्हा त्याने मला शेतातील शेत तळ्यात पोहायला गेल्यावर कपडे काढण्यास सांगितले. परंतु मी काढले नाहीत म्हणून मला शिवीगाळ केली. त्यानंतर हि तिला मोटार सायकलवर बसल्यावर पाठीमागून कुठेही मला हात लावायचा. त्यानंतर आत्याचे घरातील सर्वजण रात्री झोपलेनंतर त्याने माझे तोंड दाबून मला मोबाईलमधील सेक्स व्हिडिओ दाखवून

		व्हिडिओमध्ये जसे करतात तसे कर म्हणून माझे अंगावर झोपून त्याची पॅन्ट काढली व माझी हि पॅन्ट काढून छाती दाबून माझं पाय वर करून माझया लघवीच्या जागेत त्याच “ते” जोरात घालत होता असं त्याने ब—याचदा केलं होत आणि “कोणाला हि काही सांगू नकोस नाही तर याद राख” असे म्हणाला होता. व त्यानंतर दुस—या दिवशी सकाळी त्याने आमचे घरी सांगोला येथे आणून सोडलं
९.	प्रश्न उत्तर	त्यानंतर परत काय झालं? त्यानंतर दि. ०३/०३/२०२१ रोजी त्याने घरी येवून मला माझया बायकोपेक्षा, तू खूप आवडतेस असे मला म्हणून गेला त्यानंतर दि. १६/०३/२०२१ रोजी त्याने आमच्या सांगोला येथे घरी आला तेव्हा आमच्या घरातील सर्वजण बाभूळगावला गेले होते. त्यावेळी पण माझे अंगावर झोपून यांची पॅन्ट काढली व माझी हि पॅन्ट काढून, छाती दाबून माझं पाय वर करून माझया लघवीच्या जागेत त्याच ते जोरात घालत होता.
१०.	प्रश्न उत्तर	तुला अजून काय सांगावयाचे आहे का? मला इंद्रजीत याची लय भीती वाटतीय.

15. It is apparent from the answers given by the victim as to how she was continuously subjected to sexual assault by the applicant, which has obviously resulted into a fear in her mind. It would not, therefore, be safe to release him on bail in light of the fact that it would deeply affect the psychology and the mental health of the victim.

16. In her statement recorded by the Magistrate under Sections 161 and 164 of the Cr.P.C, the victim had reiterated all the episodes. It is pertinent to note here that after fixing the date of

his marriage, the applicant continued in his misdeed by stating that he likes the victim more than his bride, which indicates his propensity. The statement further reveals that on 16.03.2021 when her parents had gone to Babulgaon, the applicant had been to their house. The victim was sleeping in the hall. Taking disadvantage of the absence of her parents, the applicant again attempted to commit the same offence but when her elder brother woke up, the applicant pretended as if he was sleeping.

17. Obviously, there could not have been any positive report from the FSL in respect of the clothes of the victim as well as the applicant as those were seized much later in point of time, after the alleged offences.

18. There are certain **Guidelines and Protocols – Medico-legal Care for Survivors / victims of Sexual Violence**. Clause 21 of the said Guidelines reads thus :-

“21. Provisional clinical opinion

. Drafting of provisional opinion should be done immediately after examination of the survivor on the basis of history and findings of detailed clinical examination of the survivor.

. The provisional opinion must, in brief, mention relevant aspects of the history of sexual violence, clinical

findings and samples which are sent for analysis to FSL.

. An inference must be drawn in the opinion, correlating the history and clinical findings”

19. Guidelines for responding to children read thus :-

“ The prevalence of child sexual abuse in India is known to be high. A National Study on Child Abuse conducted by the Ministry of Women and Child Development showed that more than 53 per cent children across 13 states reported facing some form of sexual abuse while 22 per cent faced severe sexual abuse. Both boys and girls reported facing sexual abuse.

Most commonly, abusers are persons who are well known to the child and may even be living in the household. Children are considered soft targets for sexual abuse because they may not realize that they are being abused. Abusers are also known to use chocolates and toys to lure children. Further, children are more easily threatened and less likely to speak out about the abuse.

While the principles of medical examination and treatment for children remains the same as that for adults, it is important to keep some specific guidelines in mind:

. In case the child is under 12 years of age, consent for examination needs to be sought from the parent or guardian.

. Children may be accompanied by the abuser when they come for medical treatment, so be aware

and screen when you suspect abuse. In such situations, a female person appointed by the head of the hospital/institution may be called in to be present during the examination.

. Do not assume that because the child is young he/she will not be able to provide a history. History seeking can be facilitated by use of dolls and body charts.

. Believe what is being reported by the child. There are misconceptions that children lie or that they are tutored by parents to make false complaints against others. Do not let such myths affect the manner in which you respond to cases of child sexual abuse.

. Specific needs of children must be kept in mind while providing care to child survivors. Doses of treatment will have to be adjusted as required in terms of medical treatment. For psychological support, it is imperative to speak with the carer/s of the survivor in addition the survivor themselves.

. Health professionals must make a note of the following aspects while screening for sexual abuse. Assurance of confidentiality and provision of privacy are keys to enabling children to speak about the abuse. However genital and anal examination should not be conducted mechanically or routinely. A few indicators for routine enquiry are -

- Pain on urination and/or defecation*
- Abdominal pain/generalized body ache*
- Inability to sleep*
- Sudden withdrawal from peers/adults*

- *Feelings of anxiety, nervousness, helplessness*
- *Inability to sleep*
- *Weight loss*
- *Feelings of ending one's life."*

20. It is thus, clear that the abuser herein is a close relative of the victim. It is needless to say anything more on this aspect. It is of common knowledge that children are more easily threatened and less likely to speak out about the abuses.

21. For the reasons enumerated hereinabove, it would not be proper to release the applicant on bail.

22. As such, the application is rejected.

23. The trial Court is directed to frame a charge at the earliest and proceed with the trial expeditiously without granting unnecessary adjournment either to the prosecution and to the defence.

24. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)