

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 443 OF 2016

Saleem s/o Noorkhan Pathan,
Age: 19 years, Occ: Rikshaw Driver,
R/o. Sathenagar, Waluj, Tq. Gangapur,
District Aurangabad.

...Applicant

versus

The State of Maharashtra,
Through Waluj Police Station,
District Aurangabad.

...Respondent

.....
Mr. B.N. Magar, Advocate for applicant
Mr. K.D. Munde, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 9th FEBRUARY, 2016

ORAL ORDER :

The applicant is seeking regular bail in Crime No. 185 of 2015 registered with Waluj Police Station, District Aurangabad, on 16/09/2015 for the alleged incident dated 15/09/2015, for the offence punishable under Sections 376, 506 of the Indian Penal Code and under Sections 3(A), 4 of the Protection of Children from Sexual Offences Act, 2012.

2. The prosecution story is that the applicant is neighbour of the complainant and applicant has tried to commit offence

punishable under Sections 3(A), 3 of Protection of Children from Sexual Offences Act with the daughter of complainant namely Sayma, aged about 9 years.

3. Learned Counsel for the applicant makes two fold submissions; (a) that the investigation in the matter is complete and charge sheet is already filed, as such, the applicant's further detention is not necessary and as being aged about 9 years, it will be improper that the prosecution to detain him further pending trial and (b) there is complete improbability of conviction in the matter as victim has refused to undergo medical examination. He would then urge that attracting of Sections 3(A) and 4 of the Protection of Children from Sexual Offences Act, itself is under doubt in view of allegations in the F.I.R., statement of victim and that of one incident narrated to Doctor.

4. Learned A.P.P. opposed the application on the ground that there is strong *prima facie* case against the applicant and the applicant can be convicted on the single statement of injured.

5. Upon perusal of the investigation, it is required to be noted that what is alleged is that the applicant has indulged into penetrative sex under Protection of Children from Sexual Offences

Act, which is punishable under Sections 3(A) and 4 of the said Act. The narration, upon plain reading, in my opinion, attraction of the said section itself is under doubt. It is to be noted that victim has refused to undergo medical treatment. In view of above, further detention of the applicant will not be of any further assistance to the prosecution as *prima facie* case against the applicant is not noticed. As such, the application is allowed. Hence, the following order.

The applicant be released on bail in connection with Crime No. 185 of 2015 registered with Waluj Police Station, District Aurangabad, for the offence punishable under Sections 376, 506 of the Indian Penal Code and under Sections 3(A), 4 of the Protection of Children from Sexual Offences Act, 2012, upon furnishing P.R. bond of Rs.25,000/- with one surety in the like amount. The applicant shall keep himself away from the jurisdiction of concerned police station till conclusion of trial but for Court proceedings.

[N.W. SAMBRE, J.]