

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

CRIMINAL APPLICATION NO.1005 OF 2016

Shaikh Akhef Shaikh Farooq,
Age 29 years, Occu. Teacher,
Residing at Shahinshah Nagar,
Beed, Taluka and District Beed

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr V.D. Sapkal, Advocate for applicant
Mr S.P. Deshmukh, A.P.P. for respondent
Mr Abhay Ostwal, Advocate for complainant, assisting the A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 2nd March 2016

PER COURT

Heard.

2. The applicant is seeking regular bail in Crime No.61 of 2015, registered on 29th June 2015 at Peth Beed Police Station, District Beed for the offences punishable under Sections 376 (1) 376 (2) (i) (j) (n), 354 (A) (D), and 506 read with Section 34 of Indian Penal Code and under Sections 3, 4, 5, 6, 7, 8, 19, 21 (1) of of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act' for brevity) and under Section 37 of the Information Technology Act, for the alleged incident dated 26th June 2015.

3. In the above referred complaint dated 26th June 2015, the victim Syed Ariba, aged 14 years claimed that she was studying in 9th Standard on that day and the present applicant has committed offences, punishable under Sections of Indian Penal Code and other Acts, as referred above.

4. Thereafter, the complainant gave supplementary statement, which was recorded on 15th July 2015 under Section 164 of the Cr.P.C., wherein she stood by what has been stated in the earlier complaint dated 29th June 2015 and there were no allegations as regards commission of offence punishable under Section 376 of the Indian Penal Code.

5. It is subsequent thereto, the complainant, on or about 20th July 2015 alleged in a complaint that the present applicant has committed rape on her on 26th June 2015.

6. In nutshell, the allegations were that the applicant, her Maths teacher has committed an offence while she was studying under his supervision and also at Nobal Coaching Classes, where she attended the Model tuition classes. The another accused, who supported the present applicant is the Head Master of the institution, who is informed to have been released on pre-arrest bail by the Additional Sessions Judge, Beed vide order dated 23rd September 2015 passed below Exh.1 in Misc.Cri.Application No.493 of 2015.

7. Pursuant to the representation made to the Superintendent of Police, Beed, the offence is made punishable under Section 376 (1) (2) (i) (j) (n) of the Indian Penal Code, Section 3, 4, 5, 6, 7, 8, 19, 21 (1) of the POCSO Act and Section 37 of the Information Technology Act.

8. The applicant was arrested in the aforesaid crime on 13th October 2015.

9. In the above referred crime, while seeking regular bail, learned counsel for the applicant Mr Sapkal would urge that the investigation in the matter is complete and charge-sheet is filed, as such there is no question of tampering of evidence and further detention of the applicant is not necessary. He would then urge that there are no criminal antecedents and the applicant is in the profession of teaching and there is hardly any likelihood of running away from the process of law.

10. He would then urge that one of the accused to the crime lodged complaint against the father and maternal uncle of the victim on the same day i.e. 29th June 2015 alleging offences under Sections 307, 353, 333, 147, 149 of the Indian Penal Code resulting into registration of Crime No.62 of 2015. It is required to be noted that the Crime No.61 of 2015 in which the applicant is seeking bail and Crime No.62 of 2015 in which the victim's father and her maternal uncle are already released on regular bail, was registered on the same day.

11. Learned Counsel for the applicant then would urge that there are counter complaints against each other by the groups of the applicant and complainant.

12. Apart from above, he would invite attention of this Court to the first statement of the victim in the form of F.I.R. which was lodged on 29th June 2015, thereafter supplementary statement given on 15th July 2015 and the statement given to the Superintendent of Police, Beed on 20th July 2015 so as to demonstrate that in the background of registration of offence against her father and maternal uncle, she has improved her story by adding the offence punishable under Section 376 of the Indian Penal Code. He would then urge that thus, in the above referred investigation, the statements of the father and mother of the victim were recorded on 29th June 2015, which in no case, speak of commission of an offence punishable under Section 376 of Indian Penal Code. He would submit that the applicant is falsely implicated in the crime in question.

13. Learned A.P.P., who is assisted by Mr Ostwal, learned Counsel for the complainant, would strenuously urge that under Section 27 of the Evidence Act, two mobile phones and a knife used in commission of crime in question are already recovered. He would then submit that there are threats to the parents of the complainant resulting into registration of N.C. and the delay is very much explained, upon plain reading of statement of victim recorded under Section 164 of Cr.P.C. He would invite attention of this Court to the medical evidence and submits that there is no delay in lodging the F.I.R., as the incident has occurred resulting into registration of F.I.R. on 29th June 2015 and there is continuity of crime since beginning till that day. Learned A.P.P. then would submit that since the offence is serious one and

punishable with life, the application be rejected, as there is strong prima facie evidence against the applicant.

14. Having considered the rival submissions of the parties, it is not in dispute that co-accused who is Head Master of the institution in which the victim was studying and against whom also the allegations of commission of offence under Section 376 of the Indian Penal Code are made, was released on pre-arrest bail by the Additional Sessions Judge, Beed vide order dated 23rd September 2015 passed below Exh.1 in Misc.Cri.Application No.493 of 2015.

15. Apart from above, if the stepwise conduct of the victim and the story narrated in the F.I.R., if her statement recorded under Section 164 of Cr.P.C., recorded on 15th July 2015 and the statement made before the Superintendent of Police, Beed on 20th July 2015, coupled with the statement of the father and mother of the victim recorded on 29th June 2015 are analysed, it is amply clear that the victim has improved her story of alleged crime punishable under Section 376 of Indian Penal Code by way of after thought. There is one more facet to the matter that the alleged incident is claimed to have been took place on 26th June 2015, however, the F.I.R. came to be lodged on 29th June 2015, for which hardly there is any explanation on record. The crime as was registered pursuant to the F.I.R. lodged on 26th June 2015 at the behest of victim, if analysed in the background of the F.I.R. lodged by the co-accused against the father of victim and her maternal uncle speaks of story concocted by way of after thought

while making statement before the Superintendent of Police on 20th July 2015 by involving the applicant in a false crime.

16. Having regard to what is stated herein above, in my opinion, the applicant's further detention is no more necessary. Hence, applicant deserves to be released on bail.

17. As such, Criminal Application stands allowed. The applicant be released on bail in Crime No.61 of 2015, registered on 29th June 2015 at Peth Beed Police Station, District Beed for the offences punishable under Sections 376 (1) 376 (2) (i) (j) (n), 354 (A) (D), and 506 read with Section 34 of Indian Penal Code and under Sections 3, 4, 5, 6, 7, 8, 19, 21 (1) of of the Protection of Children from Sexual Offences Act and under Section 37 of the Information Technology Act, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(N.W. SAMBRE, J.)

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