

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

CRIMINAL APPLICATION NO.2274 OF 2016

Avinash s/o Namdeo Dongav,
Age 19 years, Occu. Education,
R/o Pimpalwadi, Taluka Washi,
District Osmanabad

..Applicant

Versus

The State of Maharashtra,
through the Police Inspector,
Washi Police Station, Taluka Washi,
District Osmanabad

..Respondent

Mr A.L. Kanade, Advocate for applicant
Ms R.P. Gaur, A.P.P. for respondent

CORAM : V.K. JADHAV, J.

DATE : 19th July 2016

PER COURT

Heard learned Counsel for the applicant and the learned A.P.P.
for the State.

2. Perused the charge-sheet. On the basis of complaint lodged by one Uttreshwar Sampati Gavali dated 1st December 2015, Crime No.206 of 2015 for the offences punishable under Sections 377, 323, 504, 506 of the Indian Penal Code read with Sec. 4 of the Protection of Children from Sexual Offences Act came to be registered at Police Station, Washi, District Osmanabad.

3. The applicant came to be arrested on 7th December 2015 and since then he is in jail. This application is filed for release on bail. The application filed by the present applicant with similar prayer came to be rejected by the Additional Sessions Judge, Bhoom vide order dated 18.3.2016 passed below Exh.9 in Special Case (POCSO) No.03/2016.

4. It has alleged in the complaint that on 1st December 2015, the minor son of the complainant had informed to him that the present applicant took that minor child in his house under the pretext to teach him mobile game and thereafter slapped and gave threat to the minor child and committed unnatural act with him. The learned Counsel for the applicant submits that the charge-sheet is now filed. He further submits that no injury was found on the person of the victim boy. Furthermore, the result of analysis of the clothes on the person of victim and the accused is in the negative and the Chemical Analyser's report discloses that neither blood nor semen is detected on the clothes. Even on the anal swab of victim Vijay, no semen is detected. Learned Counsel submits that for a considerable period the applicant remained in jail.

5. Learned A.P.P. submits that there is a strong prima facie case against the applicant. Victim Vijay had immediately disclosed the incident to his father and thereupon the complaint came to be lodged in the Police Station. During the course of investigation, the statement of Vijay came to be recorded by the Investigating Officer. He has stated as per the complaint lodged by the complainant. The learned A.P.P. submits that though the Chemical Analyser's reports are in negative, the direct evidence in this case clearly point out the guilt of the accused.

6. The applicant is in jail since 7th December 2015. Applicant is a young person aged 19 years and taking education in 11th Standard at Washi. His antecedents are clear. It appears that there is

inconsistency between the ocular evidence and the medical evidence, however, the trial Court, during the course of trial may consider it in its proper perspective. The applicant is the neighbour of the complainant and thus, the possibility of tampering of prosecution witness cannot be ruled out. Even, the victim Vijay would get pressurised merely because of the presence of the applicant in the village. There is no possibility of absconding and so far as tampering of prosecution evidence is concerned, that can be taken care of by imposing certain conditions. Hence, I proceed to pass the following order :

ORDER

(I) Criminal Application is hereby allowed. The applicant Avinash s/o Namdeo Dongav be released on bail on furnishing personal bond of Rs.20,000/- with one solvent surety of the like amount.

(II) The applicant shall not tamper with the prosecution evidence in any manner.

(III) The applicant shall not enter within the limits of village Pimpalwadi, Taluka Washi, District Osmanabad till further orders of this Court. Bail before the trial Court.

7. Criminal Application stands disposed of accordingly.