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

CRIMINAL APPLICATION NO. 3621 OF 2016

Rahul @ Satish s/o Baban @ Masaji Kshirsagar,
Age: 21 years, Occu: Agri.,
R/o: Waranga (Masai), Tq. Kalamnuri,
Dist. Hingoli ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli ..RESPONDENT

WITH

CRIMINAL APPLICATION NO. 3620 OF 2016

Bhagwat s/o Parbati Kshirsagar,
Age: 19 years, Occu: Agri.,
R/o: Waranga (Masai), Tq. Kalamnuri,
Dist. Hingoli ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli ..RESPONDENT

Ms. Pratibha Wankhede (Bharad), Advocate for applicants;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 28th July, 2016

ORAL ORDER :

Since the applicants are seeking their release on regular bail, in
Crime No. 9 of 2016, registered on 8th January, 2016, with Kalamnuri

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Police Station, Tq. Kalamnuri, Dist. Hingoli, for offences punishable under Sections 363, 376(2)(f)(I), 377, 302, 353, 201 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, both the applications are heard together and are being decided by this common order.

2. The prosecution story as against present applicants is complainant Sambhaji Harji Kshirsagar was blessed with two daughters, namely, Siddhi, aged about 4 years and Riddhi, aged about 2 years. Complainant Sambhaji was having a neighbour, by name Bhagwat Parbati Kshirsagar. Sambhaji was staying with his step-mother Gayabai, real mother Kashibai, wife Chhaya and above mentioned two daughters.

3. on 7th January, 2016, his daughter Siddhi returned back from school and after her lunch, started playing with her younger sister Riddhi. The applicants-accused took Siddhi on the pretext of giving chocolates and thereafter Siddhi went untracable. Upon search, body of Siddhi was found in the house of Parbati Kshirsagar, wrapped in bag and her mouth was gagged with a cotton cram. Same has resulted into registration of offence.

4. The applicants thereafter were arrested and after completion of investigation, charge-sheet came to be filed.

5. In the above background, while seeking grant of regular bail, learned Counsel appearing on behalf of the applicants would urge that, it is

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for last more than six months, the applicants are behind bars and since the investigation is complete, their custodial detention is not warranted. She would then submit that the case of the prosecution is based on circumstantial evidence as there is no eye-witness to the incident. According to her, if the story as narrated in the first information report is taken to be true, there is a weak case as against applicant Rahul, as the medical evidence does not corroborate the case of the prosecution about rape, as has been alleged in first information report and investigation papers.

6. In addition, she would submit that there are discrepancies in the spot panchnama about recovery of the body of deceased Siddhi. According to her, statement about not getting any traces of chocolate in the mouth of deceased Siddhi, speaks voluminous about the applicants' non-involvement in the crime in question. She would then submit that since other co-accused are released on bail, the present applicants are entitled to be released on bail on parity.

7. While opposing applications, learned Additional Public Prosecutor, while taking me through the charge-sheet, would submit that there is sufficient material on record to connect present applicants in the crime in question. He would then submit that accused Bhagwat Parbati Kshirsagar is a neighbour of deceased Siddhi and on the pretext of giving chocolates, he has taken her with the co-accused Rahul accompanying him. He then took me through the medical evidence, statement of witness Gayabai, spot

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panchnama and post-mortem report and submits that, as there is prima facie case against applicants, applications be rejected.

8. If the story as narrated in the first information report is taken note of, fact remains it is an admitted position on record that both the applicants took deceased Siddhi from her house, when Gayabai had witnessed the same. The applicants thereafter went to the shop and purchased two chocolates, as is apparent from the statement of Bismillabi Shaikh Mohammad, the shop owner. The said statement corroborated that both the applicants were alongwith deceased Siddhi and two chocolates were purchased by them from the said shop.

9. The spot panchnama and other documents depict that dead body of deceased Siddhi was recovered from gunny bag from the house of accused Parbati Yeshwanta Kshirsagar, father of accused Bhagwat. On perusal of the post-mortem report, it is noted that dead body of deceased Siddhi had following surface injuries :

- 1) lacerated wound of size 2 x 0.5 cm. extending from ruptured hymen into vaginal canal along its' axis.
- 2) laceration 1.5 cm. x 0.5 cm. extending from superior portion of Ext. anal sphincter into the anal canal.
- 3) Three small contusion marks approx. 0.2 mm in diameter, 2 cm. from the left angle of mouth in an inferolateral region forming grossly a L shaped mark.

10. Apart from above, cause of death narrated in the post-mortem report reads thus :

“In our opinion, the probable cause of death is, death was due to asphyxia due to gagging. However, final opinion regarding death is reserved as the viscera is preserved and sent for chemical analysis.”

11. After having scanned entire investigation papers placed on record, the entire investigation takes to the only conclusion that the applicants are responsible for crime in question i.e. abduction, rape and death of minor Siddhi.

12. So far as submission of the learned Counsel appearing on behalf of the applicants in relation to discrepancies in the spot panchnama and medical evidence and opinion by the Medical Officer about non-involvement of accused Rahul in the offence punishable under Section 376 of the Indian Penal Code is concerned, in my opinion, the said issue pertains to appreciation of evidence at an appropriate stage.

13. In the above background, there is strong prima facie evidence, which connects the applicants with the crime in question. The entire investigation depicts that the applicants have committed the crime in question in most brutal manner by murdering 4 year's minor girl, who

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happened to be neighbour of one of the accused Bhagwat. No leniency can be shown to the accused, particularly in the evidence as is brought before me.

14. Though the issue, as regards delay in lodging first information report is brought to my notice, still, it is required to be noted from the first information report that the incident took place on 7th January, 2016 and it is in the presence of Gayabai, applicants took away deceased Siddhi. Entire first information report speaks of the efforts taken by the complainant Sambaji and his family members for tracing deceased Siddhi and subsequent discovery of dead body of deceased Siddhi in the house of accused Parbati Kshirsagar, father of the applicant Bhagwat, justifies the lodging of first information report in later point of time. The point as sought to be canvassed, in my opinion, does not appear to the detriment to the interest of story of the prosecution. Hence said submission is also rejected.

15. In the above background, no case for grant of regular bail is made out. Both the applications fail and same stand rejected.

(N.W. SAMBRE, J.)