

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

**920 CRIMINAL APPLICATION NO. 4318 OF 2016**

**BALAJI @ BALU S/O JANARDAN  
SONKAMBLE**

**VERSUS**

**THE STATE OF MAHARASHTRA**

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Mr. G.G.Kadam, Advocate for Applicant.

Mr. S.D.Ghayal, A.P.P. for Resp. – State.

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**CORAM : A.M.BADAR, J.**

**DATE : 26<sup>th</sup> AUGUST, 2016**

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**PER COURT :**

1. The applicant/accused in Crime No. 9/2016 registered at Vimantal police station, Nanded for the offence punishable U/s 376 (2) (I) of the Indian Penal Code and u/ss 3,4,7 and 8 of the Protection of Children from Sexual Offences Act is praying for releasing him on bail after filing of the charge sheet.

2. Heard learned counsel for the applicant. He argued that no offence punishable U/s 376 (2) (I) of the Indian Penal Code and u/ss 3,4,7 and 8 of the Protection of Children from Sexual Offences Act [for short, 'POSCO Act'] is *prima facie* made out. He further argued that the offence at the most which can be reflected from the charge sheet is one punishable u/s 8 of the POSCO Act and u/s 354 of the Indian Penal Code.

3. Learned A.P.P. by drawing my attention to the report of medical examination of the victim as well as the statements of the victim, her mother and her sister contended that as the offence is against female child of 9 years age, the applicant is not entitled for bail.

4. Perused charge sheet. The crime in question is registered at the instance of the mother of the victim. The applicant is son of the landlord of the informant.

5. The informant mother reported on 10/01/2016 that on 08/01/2016, the applicant asked her to send her daughter aged about 9 years to his house for helping him in cooking on the pretext that his mother has gone to some fair. Accordingly, the informant sent her minor female child to the house of the applicant. Though sufficient time elapsed, as minor female child of the informant had not returned, the informant went to the house of the applicant and called her daughter. She banged the gate of the house of the applicant. The informant reported that after about half an hour, her

female daughter came out of the house of the applicant and upon being questioned, informed her that the applicant had sent his father out of the house and then molested her. The informant mother reported that her female child disclosed her that the applicant took out her necker and he also removed his pant and necker. Then the applicant lied down on her person causing pain to her private part.

6. Statement of the victim female child is recorded in question – answer form by the Investigating Officer. She disclosed the Investigating Officer that the applicant took out her necker and also removed his half pant. The victim child further stated that the applicant pressed her mouth, molested her and then there was pain in her private part. In the wake of narrations in the F.I.R. that after a long gap of time, the minor female child did not return to her house and that despite knocking the outer door of the house of the applicant, the minor female child did not come out of the house for a period of half an hour, medical report of the medical examination of the female child assumes great importance. The report of the medical examination of the female child does not disclose any injury on her person. Similarly, it does not disclose any injury to the private parts of the minor female child. Medical Officer opined that there is no evidence of penetrative sexual assault or intercourse with the minor female child.

7. In this view of the matter, at the time of the trial, after recording of the evidence, the offence, if any, committed

by the applicant will be determined. For the offence punishable u/s 4 of the POSCO Act, penetration is required, so also for the offence punishable u/s 376 of the Indian Penal Code.

8. The applicant appears to be young boy with no criminal antecedents as reflected from the charge sheet. His further pre-trial detention with the criminals in the wake of such evidence against him is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Balaji @ Balu s/o Janardan Sonkamble in Crime No. 9/2016 registered at Vimantal police station, Nanded for the offence punishable U/s 376 (2) (I) of the Indian Penal Code and u/ss 3,4,7 and 8 of the Protection of Children from Sexual Offences Act be released on bail on executing P.R. Bond of ₹ 15,000/- [Rupees Fifteen Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall co-operate the trial Court in expeditious disposal of the trial against him.

**[A.M.BADAR, J.]**

KNP/Cr.Apln. 4318.2016