

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

Criminal Application No. 4364 of 2016

District : Osmanabad

Chandar s/o. Namdev Thorat,
Age : 71 years,
Occupation : Hawker,
R/o. Ieet,
Taluka : Bhoom,
District : Osmanabad. .. Applicant.

versus

The State of Maharashtra,
Through Police Station, Washi,
Taluka : Washi,
District : Osmanabad. .. Respondent.

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*Mrs. S.K. Doke (Renge), Advocate, holding for
Mr. K.R.. Doke (Renge), Advocate, for the applicant.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 19TH AUGUST 2016

ORAL ORDER:

The applicant / accused in Crime No. 130/2016, for offences punishable under Sections 376(1), 376(2)(i), 376(2)(j), 376(2)(n), 506 of the Indian Penal Code, so also, under Sections 4, 8 and

12 of the Protection of Children from Sexual Offences Act, by this application, is praying for releasing him on bail.

2. Heard the learned Counsel appearing for the applicant / accused. She argued that after completion of investigation, pre-trial detention of the present applicant is not warranted and trial will take its own time. The learned Counsel further argued that the applicant is 71 years old person who is unable to take care of himself. The learned Counsel further argued that the incident, in question, allegedly happened at a public place in broad day light. Therefore, same is highly improbable and the medical evidence is also not supporting the prosecution case.

3. The learned Addl. Public Prosecutor opposed the application by contending that the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure and the same is implicating the applicant in the crime in question.

4. Perused the charge-sheet. FIR of the incident, in question, is lodged by Rameshwari Yogesh Aasalkar, who is aunt of the victim female child. In the FIR, the informant had reported that she heard about the crime, in question, from the mouth of her niece, who is the victim of the crime in question.

During investigation, statement of the victim female child, who is 9 years old, came to be recorded by the learned Judicial Magistrate (First Class). The victim female child categorically stated that the present applicant used to give her some money and that he had committed rape on her on 4 or 5 occasions. In her statement recorded under Section 161 of the Code of Criminal Procedure, the victim female has reiterated the same thing.

5. Perusal of statements of witnesses recorded during investigation shows that the present applicant used to sell eatables in front of the school where the victim child was taking education. Statements of witnesses goes to show that the present applicant used to give chocolates to the victim child. In a case relating to the sexual offence wherein a female child is the victim, broader probabilities of the prosecution case are required to be kept in mind. Version of the victim child is gaining corroboration from statements of witnesses who are deposing about presence of the applicant at the school and giving chocolates to the victim child. Considering the age of the female victim, no overbearing importance can be to the report of the medical examination showing no injuries on her person.

6. The crime, in question, is serious. Impact of the crime on the society and the circumstances in

which the same is committed are relevant considerations for granting bail. Similarly, severity of sentence is also a relevant consideration. Considering these aspects in totality, the case in hand is not a fit case to release the applicant on bail.

7. Hence, the Application is rejected.

(A.M. BADAR)
JUDGE

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