

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

22 CRIMINAL APPLICATION NO. 4934 OF 2016

ALKESH S/O DIGAMBAR AAVHANE

VERSUS

THE STATE OF MAHARASHTRA

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Mr. R.N.Dhorde, Senior Counsel i/b

Mr. V.R.Dhorde, Advocate for Applicant.

Mr. S.B.Yawalkar, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 14th SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 110/2016 registered at Ambad police station, Tq. Ambad, Dist. Jalna for the offences punishable u/ss 376(2)(I)(N), 506 read with 34 of the Indian Penal Code and u/ss 5 (L), 6, 11 (I) read with Section 12 of the Protection of Child from Sexual Offences Act, 2012 [for short, 'POSCO Act'], by this application is seeking his release on bail after filing of the charge sheet.

2. Heard the learned Senior counsel for the applicant. The learned Senior counsel argued that the

averments are regarding discharge of semen. However, this averment of the prosecutrix is not substantiated by the medical report of the prosecutrix, as the Doctor has certified that the clothes of the prosecutrix were not having any stains of blood or semen on it. The learned Senior counsel further argued that except the statement of the prosecutrix/F.I.R. and statement of her mother Meenabai, there is no material to connect the applicant to the crime in question.

3. The learned A.P.P. opposed the application by contending that the prosecutrix was born in the year 2004 and she was minor on the day of alleged incident. He further argued that considering the nature of offence, the applicant is not entitled for bail.

4. Perused the charge sheet. The crime is registered on 17/06/2016 on the basis of the report lodged by the prosecutrix. In her report, the prosecutrix averred that she had been to the grocery shop of Jugalkishor Seth for purchasing chocolate. At that time, co-accused Jugalkishor Seth took her to the bathroom located behind his shop. The prosecutrix further averred that the present applicant was inside that bathroom. According to the prosecutrix, in that bathroom, by extending threat, the applicant committed rape on her. The prosecutrix further averred that when she was coming out of the bathroom, her mother came from the front direction and saw her coming out of the bathroom. The prosecutrix further reported that her mother Meenabai also saw the present applicant coming out of the bathroom.

According to the prosecutrix, then she disclosed the incident to her mother. Thereafter, the report came to be lodged against the present applicant as well as co-accused Jugalkishor Seth.

5. Statement of Meenabai, who is mother of the prosecutrix also shows that when her daughter did not return, she went to search her daughter. Meenabai further stated that she saw her daughter coming out of the bathroom followed by the present applicant. Meenabai further reported that then she raised shouts and others gathered on the spot.

6. *Prima facie*, it is seen that the incident was noticed by Meenabai, who is mother of the prosecutrix and thereafter the report came to be lodged. The incident in question appears to have taken place at populous locality and that too behind the grocery shop. It appears that the prosecutrix did not raise alarm. Though she is stated to be of 13 years of age, statement of Meenabai indicates that the prosecutrix may be of 16 years of age. *Prima facie*, it does not appear that the applicant used violence while committing alleged act. Charge sheet does not indicate that the applicant has criminal antecedents. The investigation of the crime in question is over. The applicant also appears to be a young person with no criminal antecedents. In such a situation, keeping him behind bars in the company of criminals is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Alkesh S/o Digambar Aavhane in Crime No. 110/2016 registered at Ambad police station, Tq. Ambad, Dist. Jalna for the offences punishable u/ss 376(2)(I) (N), 506 read with 34 of the Indian Penal Code and u/ss 5 (L), 6, 11 (I) read with Section 12 of the POSCO Act be released on bail on executing P.R. Bond of ₹ 25,000/- [Rupees Twenty Five 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.]