

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

CRIMINAL APPLICATION NO. 5588 OF 2016

Ganesh S/o Karbhari Butte,
Age : 31 years, Occu.: Labour,
R/o. Sathe Nagar, Waluj,
Tal. Gangapur, Dist. Aurangabad

.. Applicant
(Orig. Accused)

Vs.

The State of Maharashtra
Through Police Station,
Waluj, Tq. Gangapur,
District : Aurangabad

.. Respondent

Mr. P.C. Mayure, Advocate for the applicant
Mr. C.V. Dharurkar, APP for the respondent/State

**CORAM : A.S. CHANDURKAR, J.
DATE : 23/11/2016**

ORAL ORDER :

Heard.

2. The applicant seeks his release on bail in connection with Crime no.I-81 of 2016 registered at Waluj Police Station, Dist. Aurangabad for the offences punishable under Section 307, 363, 377 of the Indian Penal Code, under Section 7, 8 of Protection of Children from Sexual Offences Act and under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The applicant has been arrested on 1/5/2016 pursuant to the aforesaid crime.

4. As per the FIR dated 4/4/2016, lodged by one Vinod Jadhav, his son Sanjay is alleged to have been taken away by the present applicant on 31/3/2016, by telling him that they would go for eating sugarcane. While said son was in the custody of the applicant, he was assaulted by the applicant, his neck was pressed and he had injuries on his head and face. After the report was lodged, investigation commenced. Statements were recorded. Thereafter, supplementary statements also came to be recorded, which indicated commission of offence under section 7 and 8 of the Protection of Children From Sexual Offences Act. On that basis, applicant came to be arrested on 1/5/2016.

5. Learned counsel for the applicant submitted that on 31/3/2016, the complainant had taken his son – Sanjay to Ghati hospital for medical treatment and it was stated that his son had received injuries on account of an accident. On that basis, the son was medically

examined at 6:45 pm. Provisional certificate to that effect was issued on 18/4/2016, indicating simple injuries. He therefore submitted that the case of the prosecution was substantially sought to be improved after recording the supplementary statements. Allegation regarding acts of black-magic being committed by the applicant were sought to be deleted and offences under the provisions of Protection of Children from Sexual Offences Act, came to be added. In-fact, the statement of the victim's aunt clearly indicated that the victim was taken on motorcycle by the present applicant, which substantiated the theory of accident. He therefore submitted that applicant was entitled to be enlarged on bail, especially when the investigation was completed and the chargesheet has been filed.

6. Application is opposed by learned A.P.P., by relying upon the documents filed alongwith the chargesheet. It is submitted that statements of witnesses indicate that the applicant was seen in the vicinity of the place where the complainant was residing. Even on 29/3/2016, under the pretext of searching a room for residence, the applicant had taken

away the son of the complainant and had sought to commit illegal acts. He therefore submitted that the Application in question deserves to be rejected considering the seriousness of the incident.

7. Perused the chargesheet and documents filed alongwith it. The incident in question is stated to have occurred on 31/3/2016. As per the documents, on the basis of which the medico legal case was registered, Sanjay had suffered injuries on account of accident on 31/3/2016. The provisional injury certificate indicates simple injuries on the head and left shoulder. The cause of said injury is also referred to as road accident. As per the initial statements recorded, Sanjay stated that he was taken by the present applicant and certain acts with regard to black-magic, were stated to be committed. However, in the supplementary statement, the stand is entirely changed and the acts with regard to the offences under the Protection of Children from Sexual Offences Act have been narrated.

8. It is pertinent to note that on 31/3/2016, the sister of the complainant had noticed the applicant being accompanied by Sanjay on motorcycle going out. She further states that she understood that Sanjay had been taking treatment because of the accident suffered by him. This statement prima facie corroborates the story of accident having occurred.

9. Considering the initial statements recorded followed by the supplementary statements, coupled with the provisional injury certificate, I find that the applicant has made out case for his release on bail, especially when the investigation is completed and chargesheet has been filed. The applicant can be subjected to conditions before his release on bail.

10. In view of aforesaid, the following order :-

ORDER

I) The applicant is directed to be released on bail in Crime no.I-81 of 2016 registered at Waluj Police

Station, Dist. Aurangabad for the offences punishable under Section 307, 363, 377 of the Indian Penal Code, under Section 7, 8 of Protection of Children from Sexual Offences Act and under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, upon furnishing P.R. bond of Rs.20,000/- (Rs. Twenty Thousand) with one surety in the like amount.

II) The applicant shall attend the Court of learned Sessions Judge, Vaijapur, District – Aurangabad on 10th of every month and as per the directions of the learned Sessions Judge.

III) The applicant shall not enter the limits of Waluj city, District – Aurangabad, till the completion of the trial.

IV) The applicant shall not take any steps to tamper with the prosecution material.

11. It is clarified that the observations made in this order are only for the purposes of deciding the present application.

12. Criminal Application is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/