

(1)

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

CRIMINAL APPLICATION NO.6227 OF 2016

Mahesh s/o Kacharu Gaikwad,
Age: 32 years, Occ: Agri.,
R/o. Pangari Road,Shahunagar,
Beed, Tq. & Dist. Beed. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Shivaji Nagar Police Station,
Beed, Tq. & Dist. Beed. ..RESPONDENT

Mr A.N. Nagargoje, Advocate for applicant;
Mr R.V. Dasalkar, Addl. Public Prosecutor for
respondent

CORAM : A.S. CHANDURKAR,J.

DATE : 25th NOVEMBER, 2016

ORAL ORDER :

Heard.

2. The applicant seeks his release on bail pursuant to his arrest on 30th June, 2016 in connection with Crime No. 494 of 2016 registered at Shivaji Nagar Police Station, District Beed for offences punishable under Sections 326, 326-A, 374, 323 of the Indian Penal Code, under

(2)

Section 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and under Section 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1986.

3. As per F.I.R. dated 30th June, 2016, the applicant runs Ashirwad Bhojanalaya in which he had employed one Ganesh aged about 12 years against his wishes. On making necessary enquiry, it was found that Ganesh had been working in the said Bhojanalaya. He was not being paid despite doing work. It was further stated that when he had demanded his money, he had been assaulted and given burns. On that basis, offence came to be registered under the aforesaid Sections.

4. It is submitted by the learned Counsel for the applicant that as per injury certificate dated 30th June, 2016, four simple injuries are shown to have been sustained by the said child Ganesh. The opinion of Radiologist indicates the age of the child between 11 years to 16 years. It is pointed

(3)

out that after 21 days another injury certificate was obtained, which indicated scars due to burns. On that basis, it was submitted that when the child was firstly examined on 30th June, 2016, no such scars were noticed. It is, therefore, submitted that there was no question of any grievous hurt being caused to the said child to attract the provisions of Section 326(A) of the Indian Penal Code. It is then submitted that other offences attract maximum punishment of imprisonment of only one year and hence, considering the fact that the charge sheet has been duly filed, the applicant deserves to be enlarged on bail.

5. The application is opposed by learned Additional Public Prosecutor by relying upon the police papers. He submits that the subsequent medical certificate dated 21st July, 2016 indicates scar injuries sustained by Ganesh. As per seizure effected, it is clear that the applicant had inflicted burn injuries on the said child. It is, therefore, submitted that if the application is

(4)

allowed, there is likelihood of applicant of coercing the witnesses.

6. Perused the F.I.R. as well as documents filed along with the charge sheet. First injury certificate dated 30th June, 2016 indicates four simple injuries on the body of Ganesh. His subsequent medical certificate dated 21st July, 2016 indicates certain month old scars but nature of injuries is stated to be simple. Considering the fact that both the injury certificates indicate simple injuries, *prima facie* it can be said that there are no grievous injuries suffered by the child. Provisions of Section 326 or Section 326-A of the Penal Code contemplate causing grievous hurt. Insofar as the age of said child is concerned, same is stated to be between 11 years to 16 years as per opinion of the Radiologist. The expression 'child' as defined in Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986 means a person who has not completed his fourteenth year of age. The penalty for employing a

(5)

child is imprisonment for maximum period of one year with fine. Insofar as offence punishable under Section 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 is concerned, it is to be noted that the said Act stands repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, which Act came into force on 12th January, 2016. The offence alleged is stated to be committed in May-June, 2016.

7. In that view of the matter, it is clear that the applicant has made out a strong case for his release on bail. Moreover, the chargesheet has been after completing the investigation.

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

: O R D E R :

(i) The applicant is directed to be released

(6)

on bail, in connection with Crime No. 494 of 2016 registered at Shivaji Nagar Police Station, Dist. Beed for offences punishable under Sections 326, 326-A, 374, 323 of the Indian Penal Code, under Section 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and under Section 3 and 14 of the Child Labour (Prohibition and Regulation) Act, 1986, on furnishing P.R. bond of Rs.20,000/- with one surety in the like amount.

(ii) The applicant shall attend the Court of concerned learned Judicial Magistrate, First Class, Beed on 10th of every month and as per directions of the concerned Magistrate.

(iii) The applicant shall not take any steps to coerce the prosecution witnesses.

9. It is clarified that the observations made in this order are only for the purpose of considering the present bail application.

(7)

10. Criminal Application is allowed in above terms and is disposed of.

(A.S. CHANDURKAR, J.)

Tupe