

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1034 OF 2016

Uday Aatmaram Bombe @ Mukne .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Ganesh Gole, Advocate for the applicant.
Mr.S.H.Yadav, APP for the Respondent State.
WPSI Shital Bamane from Bhiwandi Taluka PStn present.

CORAM : PN. DESHMUKH, J.

DATED : 22nd JUNE 2016

PC. :

1 Accused involved in Crime No.I-84 of 2016 registered with Bhiwandi Taluka Police Station, Thane, Rural for the offences punishable u/s.376, 323, 504, 506 of the IPC r/w Section 34 of the IPC, and Section 4, 21(1) of Protection of Child from Sexual Offences (POCSO) Act, 2012, has sought bail in the above crime.

2 Learned counsel for the applicant has read the contents of FIR dated 1st May 2016 in respect of the incident which took place on 18th April 2016, and has pointed out that from the contents of this document, no role is attributed to applicant, involving him for the offences as above, registered under the provisions of Indian Penal Code (IPC), however, has contented that at the most, offence punishable under section 21(1) of POCSO Act only can be attracted which is bailable offence punishable upto six months.

3 Learned APP has opposed the application on the ground that the age of prosecutrix is 14 years and thus, applicant is not entitled for bail since involved in a serious crime.

4 Perused the report, where-from it appears that on 18th April 2016, at about 10.00 in the morning, applicant and his brother Haresh who are owners of a brick kilns, had took prosecutrix along with one Smt.Daya Sontakke to assist in the marriage which was in the house of one Pratap Jadhav. It is alleged that while prosecutrix worked upto 9.00 in the night, she along with Smt.Daya went in a room to sleep, as instructed by wife of Pratap Jadhav. After some time, Smt.Daya left the room to hand over keys while prosecutrix was sleeping on the mattress co-accused Mayur Mukne entered the room, and against the wish of prosecutrix, sexually assaulted her. On her raising shouts, applicant Uday arrived on the spot when Mayur ran out of the room.

5 Above incident was intimated by prosecutrix to Daya on the following day. It is further alleged that applicant and his brother Haresh, inspite of having knowledge of above incident, had restrained complainant from lodging any report. However, prosecutrix on consultation with her relatives and Jaya Pardhi – Social Worker from District Thane, Smt.Laxmi Mukne and Smt.Kamal Jadhav also Social workers had lodged report on 1st May 2016.

6 On perusal of statement of Daya, it also does not implicate accused in an offence registered under section 376 IPC

with other offences of IPC. From the available evidence against the applicant, it thus *prima facie* appears that at the most, applicant can said to have contravened the provisions of section 22(1) of POCSO Act, 2012, which is punishable with Imprisonment for term which may extend to 6(six) months or with fine, or both.

7 Learned trial Court, while rejecting the application appears to have noted that applicant had threatened prosecutrix and her parents not to lodge FIR, and considering the age of prosecutrix as 13 year old, held that involvement of applicant is in serious offence and rejected the application.

8 Having considering the facts, as aforesaid, application is liable to be allowed by imposing suitable conditions as per order below.

ORDER

In the event of arrest of applicant in Crime No.I-84 of 2016 registered by Bhiwandi Taluka Police Station, he shall be released on bail on his executing P.R. Bond in the sum of Rs.20,000/- with one surety in like amount, or two sureties in the sum of Rs.10,000/- each.

Applicant shall attend Investigating Officer as and when called till filing of charge-sheet.

Needless to say that applicant shall not tamper with the investigation.

(PN. DESHMUKH, J)