

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1856 OF 2016

Bhagwan Kisan Patole.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Balwant Salunkhe i/b. Mr. Shashi D. Pandey, advocate for applicant.

Mr. Vinod Chate, APP for State.

Mr. S.V. Veer, ASI, Vadgaon Nimbalkar Police Station.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 5, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 13/5/2016 in Crime No. 136 of 2016 registered at Vadgaon Nimbalkar Police Station, Pune for the offence punishable under section 354(a) and (b)

read with Section 34 of the IPC. The investigation is completed and charge-sheet is filed on 11/7/2016. The applicant herein is charge-sheeted for the offence punishable under Section 354 of the Indian Penal Code and section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 13/6/2016 the daughter-in-law of the present applicant lodged a report at the police station alleging therein that she has got married to the son of the applicant 12 years ago. She has one daughter and 2 sons. It is alleged that whenever the applicant found the complainant alone at home, he used to make attempts to touch her inappropriately and outraged her modesty and also solicit sexual favours. The complainant had disclosed this fact to her husband and her mother-in-law. They had assured her that they would give him understanding. The complainant had also disclosed this fact to her mother and thereafter, her mother had not sent her back to her matrimonial house for some time. It is alleged that after a lapse of certain period, the relatives and the applicant had been to her maternal house to

fetch the complainant home. There was some altercation between both the families. Her husband had convinced her that they would leave separately. However, they continued to reside in the joint family.

4 As far as the incident is concerned, the complainant has alleged that on 28/4/2016, when she was alone at home, the applicant had again attempted to outrage her modesty. She had resisted the same. She had rushed out of the house and at that time, the applicant had dragged her elder daughter and had told the complainant that he would outrage the modesty of the minor daughter. It appears from the recitals of the FIR that the complainant had approached the Women Reconciliator and Advisor Smt. Sunita Shinde and thereafter, first information report was lodged in the presence of Smt. Sunita Shinde.

5 As on today, investigation is completed and charge-sheet is filed. The statement of the victim is recorded. She has corroborated

with the statement of her mother as stated in the first information report.

6 Section 8 of the Protection of Children from Sexual Offences Act contemplates punishment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine. Section 12 of the said Act contemplates imprisonment of either description for a term which may extend to three years and shall also be liable to fine. Section 354 of the Indian Penal Code contemplates imprisonment of either description for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine. It is therefore, clear that upon conviction, the applicant would be liable for the punishment with imprisonment which may extend up to 5 years.

7 The applicant is in custody since 13th May, 2016. Taking into consideration the fact that the applicant will be punished with short term sentence, the applicant is entitled to be enlarged on bail. It appears that the first information report was lodged on 13/5/2016 in

respect of the incident dated 28/4/2016 although the complainant has stated that she had informed her parents immediately about the incident. As she was residing with her parents since 28/4/2016, no effort was taken to file report and it was only after a social worker had intervened, the report was lodged. It is true that in such cases, there is always delay since elder person in the family would be hesitant to subject the women folk and especially minor daughter to social obloquy. Hence, delay in lodging FIR cannot be considered as a ground for releasing on bail.

8 It is true that the offence is heinous in nature. As on today, large number of cases of the under trials are pending before the court and it is not likely that the applicant would face trial within two years and therefore, he deserves to be enlarged on bail.

9 The complainant and her daughters are residing at Indapur since the date of the incident and the daughter of the complainant is admitted in the school at Indapur and therefore, there is no question of tampering of evidence.

10 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

11 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.

12 The Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)