

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

10 BAIL APPLICATION NO.693 OF 2020

DNYANESHWAR @ MAULI S/O BALASAHEB MUNDHE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. M.L.Wankhede h/f
Paratwagh P.P.
APP for Respondent : Mr. V S Badakh

...
CORAM : V.K. JADHAV, J.
Dated : October 20, 2020

...

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.1 of 2020 registered with Manwat Police Station, District Parbhani for the offences punishable under sections 376, 363 read with section 34 of the Indian Penal Code and under section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. His application Exh.14 with similar prayer in Spl. Case no.39 of 2020 came to be rejected by the learned Additional Sessions Judge, Parbhani vide order dated 11.3.2020.

2. Learned counsel for the applicant submits that investigation is over and charge-sheet has been submitted. The applicant is in jail since 8.1.2020 in connection with the present crime. Learned counsel submits that though victim has made certain allegations in her police statement against the applicant about intercourse, however, the Medico-legal Examination Report of the victim does not corroborate the said allegations. Learned counsel submits that in the statement of the victim recorded under section 164 of the Cr.P.C., victim has made allegations against the applicant only to the effect that he has pressed her chest and kissed her. There are no allegations against the applicant for having committed intercourse with the victim. Learned counsel submits that the Medical Officer, who has examined the victim has reserved opinion, and now he has given his opinion, which does not indicate penetration in vagina. Learned counsel submits that, in view of the same, the charge under section 354 IPC stands attracted alongwith section 363

of IPC. The applicant is a young person having no criminal history. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that statement of the victim is consistent. Victim is only 12 years of age and, as such she was not in a position to understand the actual incident happened with her. Learned APP submits that the applicant is in her relation and by taking undue advantage of the same has committed sexual intercourse with her. There is strong *prima facie* case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the investigation papers, particularly, the statement of the victim recorded under section 164 of the Cr.P.C. by the Magistrate, it appears that victim has made allegations against the applicant only to the extent that the applicant has pressed her chest and kissed her. On perusal of the Medico-legal

Examination Report of Sexual Violence pertaining to the victim, in the history recorded by the Medical Officer, victim has stated that the applicant has only slept on her person without removing her cloths or even his clothes. On perusal of the said Medico-legal Examination Report, it appears that there were no injuries on labia majora, fourchette, further no any injury, no oedema, no tenderness noted on hymen perineum. The concerned medical officer, who has reserved his opinion till receipt of the FSL reports has further given his opinion that there are no signs suggestive of penetration in vagina. The applicant is in jail for a considerable period. His antecedents are clear. Thus, considering the entire aspect of the case, particularly, victim's statement recorded under section 164 of the Cr.P.C. by the Magistrate and Medico-legal Examination Report, I am inclined to release the applicant on bail with certain conditions. Hence, following order.

O R D E R

I. Application is hereby allowed.

aaa/-

II. Applicant DNYANESHWAR @ MAULI S/O BALASAHEB MUNDHE in connection with Crime No.1 of 2020 registered with Manwat Police Station, District Parbhani for the offences punishable under sections 376, 363 read with section 34 of the Indian Penal Code and under section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on furnishing P.B. of Rs.20,000/- (Rs. Twenty Thousand) with one solvent surety of the like amount on the following conditions :-

- a] The applicant shall not tamper with the prosecution evidence in any manner.
- b] The applicant shall not make any attempt to meet or communicate the victim in any manner till the conclusion of the trial.

III. Bail application is accordingly disposed off.

(V.K. JADHAV, J.)

...