

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 BAIL APPLICATION NO. 945 OF 2020

AMOL S/O BANSILAL DHAWALE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. R. R. Imale
APP for Respondent-State : Mr. A. S. Shinde
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CORAM : V. K. JADHAV, J.
DATED : 8th OCTOBER, 2020

PER COURT:-

1. The applicant is seeking bail in connection with crime No. 269 of 2020 registered with Sadar Bazar police station, District Jalna for the offences punishable under Section 376(2)(f)(i)(h) and under Sections 3(a), 4, 5(m) (n) and 6 of the Protection of Children from Sexual Offences Act, 2012. His application below Exhibit 4 in Special Case (Ch.) No. 104 of 2020 with similar prayer came to be rejected by the learned Judge, Special Court (POCSO), Jalna vide order dated 31.07.2020.

2. Learned counsel for the applicant submits that though there are allegation of commission of rape, however, the medical examination report of the victim does not support the same. Learned counsel submits that it has been specifically alleged by the victim about penetration, however, in column No.18 of the medical examination report of the victim pertaining to external genitalia, the Urethral meatus and vestibule, Labia majora, labia minora and

hymen also found intact. In column No.18 all findings are normal. Learned counsel submits that even the Medical Officer who has examined the victim has recorded the finding that no any injury is seen over the body of the victim. Learned counsel submits that even though the victim has not sustained any injury on her body or even on her genitalia and even the accused has not sustained any injury, the blood sample collected from the spot and the blood stains on the clothes of the accused are found to be of the blood group of accused. Learned counsel submits that the applicant was also subjected to medical examination and there is no injury noted on his person or on the private part. Learned counsel submits that so far as the samples of vaginal swab, semen, pubic hair, nails of the victim are concerned, the report of the chemical analyzer is silent on it. There is no positive finding recorded by the chemical analyzer in respect of those samples. Learned counsel submits that at the most, the case falls under Section 7 of the Protection of Children from Sexual Offences Act, 2012 which speaks about sexual assault which is punishable under Section 8 of the said Act and the maximum punishment for sexual assault is five years. The applicant is a young boy of 20 years of age. There is no criminal history. The applicant is available for trial. The applicant is ready to abide the conditions, if imposed by this court. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that the statements of the victim and her mother recorded

under Section 161 of Cr.P.C. and 164 of Cr.P.C. before the Magistrate are consistent. The victim has specifically made allegations against the applicant about insertion of penis in vaginal smear of the victim. Learned A.P.P. submits that the victim is below 12 years of age and even in the medical examination report, the possibility of sexual assault has not been ruled out. *Prima facie*, there is a strong 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 charge sheet, though I find that the victim has made certain allegations against the applicant and her mother has also noted blood on the private part of the victim after the alleged incident, however, the medical examination report of the victim does not support the prosecution story to the extent of insertion of penis in vaginal smear of the victim. On careful perusal of the medical examination report of the victim, particularly column No.18, it appears that all the findings in respect of Urethral meatus and vestibule, labia majora, labia minora, fourchette and introitus, hymen perineum, external urethral meatus are recorded as normal. In column No.17 it has been specifically mentioned that no any injury is seen all over the body of the victim. It is pertinent to note that even though the victim has not sustained any injury all over the body and even the findings about genitalia are normal and even though the medical examination of the applicant does not speak about any injury

on his body including his private part, the blood appeared on the spot and on the clothes of the accused is stated to be of his blood group as per the findings recorded by the chemical analyzer. It appears that the victim is 11 years of age. Thus, considering the specific finding recorded in the medical examination report, possibly there was sexual assault without any penetration. It is for the trial court to consider entire evidence including the evidence of the medical officer. However, case is made out by the applicant for grant of bail. The applicant is a young person having no criminal history. I am thus inclined to release the applicant on bail with certain conditions. Hence, I proceed to pass the following order:-

O R D E R

- I. Application is hereby allowed.
- II. The applicant AMOL S/O BANSILAL DHAWALE, in connection with crime No. 269 of 2020 registered with Sadar Bazar police station, District Jalna for the offences punishable under Section 376(2)(f)(i)(h) and under Sections 3(a), 4, 5(m) (n) and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on furnishing personal bond of Rs.20,000/- with one solvent surety of the like amount on 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 with the victim in any manner, till conclusion of the trial.

III. Application is disposed of.

(V. K. JADHAV, J.)

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