

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

935 BAIL APPLICATION NO.1114 OF 2020

Manoj S/o Bhikan Nangurde ... Applicant.

Versus

The State of Maharashtra ... Respondent.

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Advocate for Applicant : Mr. C. C. Deshpande.

APP for Respondent-State : Mr. A. S. Shinde.

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CORAM : V. K. JADHAV, J.

DATE : 08.10.2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.87 of 2020 registered with Shillegaon Police Station, District Aurangabad for the offences punishable under Sections 376(2)(I)(N), 376(3), 363, 366, 366(A) r/w Section 34 of the IPC and Sections 4, 8, 12, 17 of POCSO Act. His application with similar prayer came to be rejected by the Additional Sessions Judge, Vaijapur, District Auranbagad, vide order dated 29.06.2020 in Special Case No.29 of 2020, below Exh.7.
2. The learned counsel for the applicant submits that the father of the victim has lodged the complaint after noticing

that the victim was missing from the house, against the unknown persons. The learned counsel submits that though the victim shown to have been made certain allegations against the applicant about kidnapping, sexual intercourse number of times in her statement recorded before the members of the Child Welfare Committee, however, in the statement of the victim recorded under Section 164 of the Cr.P.C. before the Magistrate, the victim has not stated anything about the sexual intercourse. On the other hand, it appears from her statement recorded under Section 164 that the victim had joined the company of the applicant and then travelled along with him at various places and thereafter both of them were caught by the police. The learned counsel submits that even the medical examination report of the victim does not support the allegations made in the said statement of the victim recorded before the members of the Child Welfare Committee. The applicant is a young person having no criminal history. The applicant is available for trial. The applicant is ready to abide any conditions, if released on bail. The applicant may be released on bail.

3. The learned APP has strongly resisted the application on the ground that the victim in her statement recorded before the members of the Child Welfare Committee has made the allegations of sexual intercourse by the applicant number of times at various places. The learned APP submits that though the medical examination report is silent about tear of hymen on examination of External Genitalia. Considering the age of the victim those findings may not appear in the medical examination report. The learned APP submits that the victim is less than 12 years of age. The learned APP submits that considering the age of the victim if consent is given by her, the same is immaterial. *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 investigation papers particularly the statement of the victim recorded under Section 164 of the Cr.P.C. before the Magistrate, it appears that though the victim has stated that she left the house and joined the company of the applicant voluntarily on 29.03.2020 and travelled along with him at various places, however, the victim has not stated

anything about the sexual intercourse by the applicant with her. Even the medical examination report particularly in column No.18, the findings on examination of External Genitalia appears to be within normal range and there is no evidence of abrasion, redness, edema etc. on hymen and everything is within normal limits. I hardly find any findings which indicates about the intercourse but even then the Medical Officer has given the provisional opinion that the sexual intercourse cannot be ruled out. Though the informant is a girl less than 12 years of age and her consent if any is immaterial, however, considering the statement of the victim recorded before the Magistrate and at present she is with her parents, I am inclined to grant bail to the applicant who is a young person having no criminal history. Hence following order :

ORDER

1. The application is hereby allowed.
2. The applicant Manoj S/o Bhikan Nangurde in connection with Crime No.87 of 2020 registered with Shillegaon Police Station, District Aurangabad for the offences punishable under Sections 376(2)(I)(N), 376(3), 363, 366, 366(A)

r/w Section 34 of the IPC and Sections 4, 8, 12, 17 of POCSO Act be released on bail on furnishing P.B. of Rs.20,000/-(Rupees Twenty Thousand only) 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 with the victim in any manner till the conclusion of the trial.
3. The application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-