

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

914 BAIL APPLICATION NO.1164 OF 2020

BHARAT S/O. SANJAY GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr.Gaikwad Anil M.
APP for Respondent : Mr. N T Bhagat

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CORAM : V.K. JADHAV, J.
Dated: December 08, 2020

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PER COURT :-

1. The applicant is seeking regular bail in connection with crime No.118 of 2020 registered with Markhel police station, District Nanded for the offences punishable under Sections 363, 366, 376(2)(j) of IPC and for the offences punishable under Sections 4, 8, 12 of POCSO Act, 2012. His application below Exh.3 in Special Case No.24 of 2020 with similar prayer came to be rejected by the learned Special Judge, Biloli vide order dated 10.09.2020.

2. Learned counsel for the applicant submits that investigation is over and charge-sheet has been

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submitted. The applicant is in jail in connection with the present crime since 27.6.2020. Deceased Kalpana was found missing from the house since 20.6.2020. On 22.6.2020 one skeleton body of a girl was found. Consequently, the informant who happened to be the mother of the deceased has lodged the complaint naming the present applicant expressing doubt against him as an assailant. It has been alleged in the complaint that there was a love affair between the deceased and the applicant and the applicant has kidnapped the deceased Kalpana and thereafter committed her murder. Learned counsel submits that thereafter on 27.6.2020 informant has lodged another FIR explaining therein that her own son Anil (brother of deceased Kalpana) has committed the murder of the deceased Kalpana. It seems to be a honour killing. Learned counsel submits that on the basis of the complaint lodged by the informant Crime no.116 of 2020 for the offence punishable under section 302 of IPC came to be registered against her own Son Anil for having committed the murder of the deceased Kalpana.

Learned counsel submits that so far as the present applicant is concerned, since the deceased was a minor the crime under sections 376(2)(j), 363, 366 of IPC and under sections 4, 8, 12 of the POCSO Act came to be registered against the present applicant vide crime no.118 of 2020.

3. Learned counsel submits that one skeleton body of a girl was found and it is alleged to be the dead body of deceased Kalpana. The aforesaid crime no.116 of 2020 came to be registered against the present applicant only on the basis of the statements of two women namely Janabai Malegave and Sangita Patil. Learned counsel submits that both the witnesses in their statements recorded under section 164 of the Cr.P.C. before the Magistrate have not stated anything about witnessing the sexual intercourse between the applicant and the deceased on 20.06.2020 at about 03.00 p.m. Learned counsel submits that during the course of the investigation, the statement which is in confessional form of the said Anil (brother of the deceased Kalpana)

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was recorded in connection with the present crime. According to him, on 20.6.2020, at about 01.00 p.m. he has found his sister deceased Kalpana was proceeding towards Hola (water canal) and therefore he got annoyed. Witness Anil had suspected that his sister deceased Kalpana was proceeding from the side of the said water canal to meet the present applicant as there was love affair between them. According to him, in the fit of anger he has killed his own sister. Learned counsel submits that as per the statement of witness Anil, if he found his sister deceased Kalpana proceeding towards the water canal at about 1.00 p.m. and if he has killed her there only, then, it is not possible for those two witnesses namely Janabai Malegave and Sangita to notice the presence of the deceased Kalpana alongwith the applicant in their agricultural field at about 3.00 p.m. on the said date. Learned counsel submits that so far as the allegations about commission of rape is concerned, except the observations in column no.15 of the postmortem report, there is nothing against the applicant to connect him with the crime. Even

though skeleton body was found, it has surprisingly come in the postmortem report about rupture of hymen. Learned counsel submits that apart from this, in order to prove the commission of rape, victim's statement is decisive. In the instant case, there is only hearsay evidence. Learned counsel submits that the applicant is 20 years of age, having no criminal history. The applicant has his roots in the society, easily available for trial. The applicant is ready to abide the conditions, if imposed by this Court including the condition as not to enter within the limits of village Dhangarwadi, Tq. Degloor, District Nanded. The applicant may be released on bail.

4. Learned A.P.P. has strongly resisted the application on the ground that as per the statements of the witnesses there was a love affair between the applicant and the deceased Kalpana. Deceased Kalpana was found missing on 20.6.2020 and thereafter skeleton body of a girl was found in the village. It is not disputed by any one that the skeleton body was not of the

deceased. Learned APP submits that there are eye witnesses to the alleged commission of rape. Witness Janabai Malegave and witness Sangita Patil both have witnessed that the applicant was performing sexual intercourse with the deceased in the standing crop of their field on 20.6.2020 i.e. the day on which deceased Kalpana was found missing. Learned APP submits that in column no.15 of the postmortem notes the concerned Medical Officer, who has conducted the postmortem examination, recorded about rupture of the hymen. Learned APP submits that the deceased Kalpana was 16 years of age at the time of her death and she was unmarried. In view of the same, there is strong prima facie case against the applicant. There is strong possibility of tampering with the prosecution evidence. The applicant may not be released on bail.

5. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that the informant (the mother of the deceased Kalpana) herself has lodged the complaint against her own son

Anil for having committed the murder of the deceased Kalpana. It seems to be a honour killing since deceased Kalpana was having love affair with the present applicant. So far as the allegations about the commission of rape against the applicant is concerned, except those two witnesses namely Janabai and Sangita, there is no further connecting evidence against the applicant. So far as those two witnesses Janabai and Sangita are concerned, they have resiled from their earlier statements and altogether given a different story in their statements recorded under section 164 of the Cr.P.C before the Magistrate. It further appears that during the course of the investigation of the present crime, statement of said Anil (brother of the deceased Kalpana) came to be recorded. Witness Anil has given confessional statement wherein he has admitted his guilt. According to him, on 20.6.2020 at about 01.00 p.m., he found his sister deceased Kalpana was proceeding towards the water canal. He had suspected that deceased Kalpna was proceeding towards the water canal to meet the present applicant, since there was a

love affair. Thus, in the hit of anger he had committed murder of his own sister deceased Kalpana. Whether his confessional statement is admissible or not is a different issue, however, according to him, at about 1.00 p.m. or around it he had committed murder of his own sister. In view of the same, in all probabilities it appears to be impossible for these two witnesses namely Janabai and Sangita to see the applicant alongwith the deceased Kalpana at about 3.00 p.m. in the standing crop of their agricultural field. However, it is for the trial court to appreciate the evidence on its own merits during the course of the trial. Thus, considering the nature of the allegations and the fact that the applicant is a young boy 20 years of age, having no criminal history, I am inclined to release the applicant on bail with certain conditions. Hence, the following order:-

ORDER

- I. Application is hereby allowed.
- II. The applicant BHARAT S/O. SANJAY GAIKWAD, in connection with crime No.118 of 2020 registered with Markhel police station, District Nanded for

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the offences punishable under Sections 363, 366, 376(2)(j) of IPC and for the offences punishable under Sections 4, 8, 12 of the POCSO Act, 2012, be released on bail on furnishing personal bond of Rs.20,000/- (Rs. Twenty Thousand), 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 enter within the limits of village Dhangarwadi, Tq. Deglur, District Nanded till the conclusion of the trial.

III. Application is disposed of.

(V.K. JADHAV, J.)

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