

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 BAIL APPLICATION NO.1234 OF 2020

GORAKH @ GORAKHNATH S/O VITHALRAO DASARWAD
VERSUS
STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. S. R. Bagal h/f
Mr. Gadegaonkar Bharat N.
APP for Respondent-State : Mr. A. A. Jagatkar

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CORAM : V. K. JADHAV, J.
DATED : 11TH DECEMBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 144 of 2020 registered with Palam Police Station, District Parbhani for the offence punishable under Sections 376(2)(I), 452, 323, 504 of IPC and under Sections 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. His application with similar prayer below Exhibit 6 in Special Case No. 33 of 2020 came to be rejected by the Additional Sessions Judge (Special Judge), Gangakhed, District Parbhani vide order dated 23.09.2020.

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2. Learned counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. The applicant is a young person having no criminal history, detained in jail in connection with the present crime since 22.07.2020. Learned counsel submits that the informant/victim has merely alleged in the FIR about outraging of her modesty and further the quarrel between the members of the two families on account of the same. However, after a gap of six days i.e. on 27.07.2020, the informant has made the addition about commission of rape. Learned counsel submits that during the course of investigation, immediately after the incident i.e. on 22.07.2020, the victim was subjected to medico-legal examination, however, in the relevant column, the concerned Medical Officer has recorded the finding as 'normal in appearance' about the labia majora, labia minora and hymen perineum. So far as the per vaginum examination is concerned, there is specific note in the medical examination report that the victim has denied the said examination. Learned counsel submits that the

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applicant is ready to abide the conditions if imposed by this Court, including the condition as not to enter within the limits of village Vanghujwadi, Taluka Palam, District Parbhani till conclusion of the trial to avoid the possibility of tampering of the prosecution evidence.

3. Learned APP has strongly resisted the application on the ground that the victim is 15 years of age and though initially she has made allegations against the applicant about outraging her modesty before the police, however, afterwards in her statement recorded under Section 164 of Cr.P.C. before the Magistrate, the victim has disclosed about commission of rape. Learned APP submits that *prima facie* there is strong case against the applicant. There is possibility of tampering with the prosecution evidence. The applicant's family is the neighbour of the informant. 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, it appears that

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the victim, on the very next day of the incident i.e. on 22.07.2020, has made allegations against the applicant about outraging her modesty. It has been alleged that as soon as the applicant caught hold of her hand, dragged her inside of the house and forcibly made her fell down on the ground and tried to remove her leggings, the informant/victim raised hue and cries. In consequence thereof, immediately the grandfather of the informant ran to the spot and on seeing him, even the applicant tried to hide himself in the house itself. It further appears from the allegations in the FIR that thereafter, there was a quarrel between the members of the two families. During the course of investigation, the statement of the grandfather of the victim, namely, Ramrao Bajirao Devkate came to be recorded and that is on the similar lines. It further appears that after a gap of six days, the informant/victim has made allegations about commission of rape against the applicant. I have carefully perused the medico legal examination report about sexual violence on the victim. So far as the examination of external genitals of the victim is concerned, the concerned

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Medical Officer has recorded the finding as 'normal in appearance'. So far as the per vaginum examination is concerned, initially, the victim has denied for the said examination, however, it was done at 4.00 p.m. at higher center. As per the P/V examination, the vagina was admitting tip of finger and it was painful. Even though the Investigating Officer has made specific query to the Doctor, however, it further appears from the said medico legal examination report that the concerned Medical Officer has opined that it is 'difficult to say sex coitus happened'. In view of the same, there is no further connecting evidence against the applicant for having committed rape on the victim. The applicant is a young person. He is 20 years of age having no criminal history. The applicant has roots in the society. However, the applicant is the neighbour and in view of the same, it would be appropriate if his entry is restricted in the village till conclusion of the trial to avoid the possibility of tampering the prosecution evidence. Hence, following order.

O R D E R

I. The application is hereby allowed.

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II. The applicant GORAKH @ GORAKHNATH S/O VITHALRAO DASARWAD be released on bail in connection with Crime No. 144 of 2020 registered with Palam Police Station, District Parbhani for the offence punishable under Sections 376(2)(I), 452, 323, 504 of IPC and under Sections 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on his furnishing P.B. of Rs.20,000/- 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 enter within the limits of village Vanbhujwadi, Taluka Palam, District Parbhani till conclusion of the trial

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c] 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 accordingly disposed of.

(V. K. JADHAV, J.)

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