

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1261 OF 2020

Nihal Ajij Shaikh

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. M. S. Ubale h/f Mr. L. K. Pradhan, Advocate for applicant.
Mr. A. M. Phule, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24-11-2020

ORDER :

. Present application has been filed under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.I-346 of 2019 by Kopargaon City Police Station, Dist. Ahmednagar for the offence punishable under Section 376 of Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned Advocate Mr. M. S. Ubale holding for learned Advocate Mr. L. K. Pradhan and learned APP Mr. A. M. Phule for respondent – State.

3. It has been vehemently submitted on behalf of the applicant-accused that the informant is the mother of victim. Victim is stated to be six years old, who is stated to have been ravished in a vehicle while she was playing. If the medical report of the victim is perused, then it states that there is no physical or genital injuries. There was no injury to the anus and rectum. Therefore, there is no direct evidence against the applicant. The investigation is already complete and charge sheet has been filed. It would take much time for his trial to stand. Applicant is ready to abide by the terms of the bail.

4. Learned APP strongly opposed the application and submitted that the applicant has committed heinous crime. The victim is only six years old girl. She is not even able to understand all these aspects and when she was playing with her friends in a car, where the applicant was also present to whom she has referred as Chachu has done such act. The medical report is supporting the prosecution. The applicant is resident of the same vicinity and, therefore, possibility of pressurizing the witnesses cannot be ruled out.

5. At the outset, it can be seen that the charge-sheet has been filed and, therefore, there is room to infer that the investigation is over. The First information report has been lodged by the mother of the victim, who came to know about the incident on the next day taking into consideration the acts of the

victim. The victim had then told her about the incident that had taken place in a car, where she was playing along with friends around 5.30 p.m. Statement of the victim has been recorded, though she is aged six years. Statements of other children, who were playing along with her, have also been recorded. As regards the medical report is concerned, the learned Advocate for the applicant has read only the half portion and, in fact, it has been opined “However, sexual assault, sexual violence of intercourse cannot be ruled out. Final opinion will be given after reports of FSL is made available.” Thus, the initial report is in favour of the prosecution. The statement of the informant has also been taken under Section 164 of the Code of Criminal Procedure. Therefore, taking into consideration the evidence that has been collected, there appears to be *prima facie* case against the present applicant. The manner in which the offence has been committed and the victim involved, is a small child of six years, are the factors which are considered here. It is also considered that the applicant is from the same vicinity. Therefore, this is not a fit case where the applicant should be released on bail. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm