

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

925 BAIL APPLICATION NO.1367 OF 2020

PARMESHWAR MANIK GOLHAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Chatterji Joydeep
APP for Respondent : Mr. S P Deshmukh

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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.579 of 2019 registered with Pathardi police station, District Ahmednagar for the offences punishable under Sections 376 (2)(J)(N) of the Indian Penal Code and under sections 3,4,5 and 6 of the Protection of Children from Sexual Offences Act, 2012. His application Exhibit 5 with similar prayer in Special Case No.43 of 2020 came to be rejected by the learned Additional Sessions Judge, Ahmednagar vide order dated 28.2.2020.

2. Learned counsel for the applicant submits that investigation is over and charge-sheet has been submitted. The applicant is in jail in connection with the present crime since 6.11.2019. The applicant is a young person having no criminal history. Learned counsel submits that as per the complaint lodged on 15.10.2019 by the mother of the victim, the victim has not disclosed name of the applicant and victim has simply informed to the mother that one unknown person while she was proceeding towards the house from the school dragged her in the standing crop of the cotton and committed rape on her. Learned counsel submits that, after a considerable gap, on 5.11.2019 victim allegedly disclosed name of the applicant to her parents. It has been alleged by the victim that in the month of August the applicant has entered in her house and committed forcible sexual intercourse with her. It is also stated in the said statement that thereafter time to time the applicant entered in the house and committed forcible sexual intercourse with her. In consequence thereof she became pregnant. Learned counsel submits

that thereafter the statement of the victim came to be recorded under section 164 of the Cr.P.C. before the Magistrate on 23.11.2019, wherein victim has only referred one incident allegedly occurred in the month of August 2019 and she has not stated anything about the repeated forcible sexual intercourse with her by the applicant. Learned counsel submits that on three occasions victim has given three different statements. The learned counsel submits that during the course of the investigation victim was subjected to Clinical and Radiological examination for determination of her age. According to the opinion given by the concerned Medical Officer, after going through the dental opinion and forensic expert's opinion, age of the victim is between 17 to 18 years. Learned counsel submits that though DNA report indicates that the applicant is the biological father of abortus foetus, however, in the given set of allegations and considering the nature of the allegations, possibility of consensual sexual relations cannot be ruled out. The applicant is having his roots in the society, easily available for trial. The applicant is

ready to abide the conditions, if imposed by this Court while enlarging on bail including the condition as not to enter in the village. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that victim was less than 18 years of age and as such her consent in any form is immaterial. Learned APP submits that as per the bonafide certificate issued by the concerned School Head Master victim was less than 18 years of age. Learned APP submits that DNA report is positive. Victim is minor and, therefore, she has made disclosure about name of the applicant lately. There are allegations by the victim that the applicant has given threats to her and performed forcible sexual intercourse and due to the threats given to her by the applicant, she has not disclosed the incident to her family members. Learned APP submits that prima facie, there is 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, it appears that initially the victim has disclosed that she was subjected to rape by one unknown person, however, after a considerable gap, she had disclosed the name of the present applicant with the allegations that under the threats the applicant had committed forcible sexual intercourse with her in the month of August and without specifying the dates made allegations that the applicant has repeatedly performed forcible sexual intercourse by entering into her house. It further appears that during the course of the investigation, investigation officer has not collected birth certificate or school leaving certificate of the victim. There is only bonafide certificate which is part of the investigation to indicate that the victim is less than 18 years of age. Victim was subjected to clinical and Radiological test during the investigation. It appears that her age is between 17 to 18 years. It appears that victim has changed her stand on three occasions and given three different statements including her statement before the

Magistrate recorded under section 164 of the Cr.P.C. Even though DNA report is positive, however, considering the different stands taken by the victim on three different occasions, possibility of consensual sexual relations cannot be ruled out. The applicant is a young person 20 years of age having no criminal history. In view of the same, by imposing certain conditions as not to enter in the village till the conclusion of the trial to avoid possibility of tampering with the prosecution evidence, I am inclined to release the applicant on bail. Hence, following order :-

O R D E R

- I. Application is hereby allowed.
- II. The applicant PARMESHWAR MANIK GOLHAR in connection with crime No.579 of 2019 registered with Pathardi police station, District Ahmednagar for the offences punishable under Sections 376 (2) (J)(N) of the Indian Penal Code and under sections 3,4,5 and 6 of the Protection of Children from Sexual Offences 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 :-

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- a) The applicant shall not tamper with the prosecution evidence in any manner.
 - b) The applicant shall not enter within the limits of village Javalwadi, Tq. Pathardi, District Ahmednagar, till the conclusion of the trial.
- III. The applicant shall not make any attempt to meet or communicate the victim in any manner till the conclusion of the trial.
- IV. Application is disposed off.

(V.K. JADHAV, J.)

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