

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.644 OF 2020

HARSING BILAL PATIL
VERSUS
THE STATE OF MAHARASHTRA

Mr.A.J.Patil, Advocate for the appellant.
Mrs.P.V.Diggikar, APP for respondent No.1.

**(CORAM : RAVINDRA V. GHUGE AND
B.U.DEBADWAR, JJ.)**

DATE : 16/12/2020

PER COURT :

1. On 15/12/2020, we had passed the following order :-

*"1. After this Court expressed a view that it is not inclined to entertain this appeal, the learned Advocate for the appellant sought an adjournment till tomorrow.
2. Stand over to 16.12.2020, in the urgent admissions category."*

2. Keeping in view that we had granted the liberty to the learned Advocate for the appellant to advance his further submissions, we have heard him extensively. He has referred to the record available and his submissions are based on the following grounds :-

[a] He is a 72 years old man and would never commit an offence

which would be punishable u/s 376 of the IPC and Sections 7, 8, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012.

[b] He had taken a house on rent just about 8 days prior to the lodging of the FIR and it is not possible that he would commit such a crime against an 11 year old girl who lived in the house adjacent to the accommodation of the appellant.

[c] Previously, the mother of the victim had filed an FIR against another person alleging that the person had held her hand at a bus stand and she lodged a complaint of outraging her modesty.

[d] The appellant does not have criminal antecedents.

[e] The appellant is behind bars ever since his arrest on 26/05/2020.

[f] The charge would be framed in the Special POCSO case in the near future.

[g] It is denied that the appellant had ever committed such an act.

3. The learned Prosecutor has drawn our attention to the FIR and the statement of the victim recorded u/s 161 of the Cr.P.C. by the S.D.P.O. Chalisgaon dated 26/05/2020. It is submitted that as the mother and father of the victim are farm labourers and were

not in the house, the appellant made his first attempt on 23/05/2020. He tried penetration and the words used by him upon being unsuccessful in causing intercourse with the child, are set out in the third paragraph of the statement of the victim. The appellant thereafter again made an attempt on the next date 24/05/2020. He was again unsuccessful keeping in view the tender age of the victim. On both the occasions, he stripped the girl naked, himself became naked and attempted to penetrate. On 25/05/2020, again finding the victim alone at home at around 2.00 p.m., as he entered the house, the victim realized that he was likely to attempt in the same manner, which he had done on 23/05/2020 and 24/05/2020. She started screaming and called out to her aunt. As she screamed, the appellant got scared and rushed back to his adjacent house.

4. The learned Advocate for the appellant relies upon the judgment of the Hon'ble Apex Court in the matter of **Sanjay Chandra Vs. CBI [2012] 1 SCC 40** and **Dataramsing Vs. State of UP [2018] 3 SCC 22** in support of his contention that his freedom and liberty is his fundamental right and until he is proven to be guilty of commission of offence alleged against him, he is deemed to be an innocent person and therefore should be

immediately set at liberty.

5. We have gone through the statement of the victim which is quite explicit and being a girl of a tender age of only 11 years, she has narrated all events in details when she was interrogated by the SDPO. If the offence is proved, it would amount to a heinous crime. The appellant is a 70 years old man and the victim, going by the social pattern of villages, is practically of the age of his great grand daughter.

6. The victim and her family are poor labourers and stand a risk of being threatened or manipulated. Tampering of evidence cannot be ruled out.

7. Taking into account the factors recorded as above and in view of the fact that the trial in the matter would commence, setting the appellant at liberty would send a wrong signal, in as much as, the victim is likely to be terrorized if the appellant was to roam around free.

8. In view of the above, we do not find that this is a fit case for granting bail to the appellant.

9. This appeal is, therefore, dismissed.

(B.U.DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)