

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.2772 OF 2019

Abaso Ramchandra Madane	.. Applicant
V/s.	
State of Maharashtra & Anr.	.. Respondents

Mr. Aniket Nikam a/w. Vivek Arote, for the applicant.
Mr. Ajay Patil, for the Respondent / State.
Mr. Shriram Choudhari, for the Respondent No.2.

CORAM : C.V. BHADANG, J.
DATE : 9th DECEMBER, 2020

PC.

. The applicant is facing prosecution for the offence punishable under Section 376(2)(i)(1) of the IPC and Section 4, 6, 8, 12 and 42 of the Protection of Children from Sexual Offences Act (the 'POCSO Act' for short).

2. The prosecution case as disclosed from the complaint dated 14/5/2019 lodged by the mother of the victim, is that her daughter who is a victim was aged about 15 years at the relevant time. The victim is said to be a mentally challenged girl. It is the material prosecution case that on 14/5/2019 when the victim was alone in

the house, the applicant who is a neighbour went to the house of the complainant and called the victim on the pretext of giving her guavas. It is said that the victim went along with the applicant in the field, plucked two guavas, out of which she had one and the other was given to the applicant. It is after this that the applicant is alleged to have taken the victim to the sugarcane crop and had forcible sexual intercourse with her. On such a complaint, the offence came to be registered and after investigation, the chargesheet is filed.

3. The learned Sessions Judge has refused to release the applicant on bail.

4. I have heard the learned counsel for the applicant and the learned APP. Perused record.

5. It is submitted by the learned counsel for the applicant that the medical report does not support the case of the prosecutrix being subjected to forcible sexual intercourse in the field having a standing sugarcane crop. He pointed out that there are no surface injuries on the person of the prosecutrix. It is submitted that the medical opinion is not conclusive about she being subjected to forcible

sexual intercourse. The learned counsel has pointed out in the affidavit dated 14/10/2020 filed by the complainant claiming that the complaint was lodged under misconception and expressing no objection for release of the applicant on bail. He submitted that the investigation is complete and the chargesheet is filed and no purpose will be served by detaining the applicant behind the bars pending trial.

6. The learned APP has submitted that the offence is serious in which a mentally challenged girl aged about 15 years has been sexually abused. The applicant is residing in the neighbourhood and therefore, the possibility of a threat to the complainant or the victim cannot be ruled out.

7. I have carefully considered the rival circumstances and the submissions made. It is true that the allegation is about the applicant having sexually abused a girl aged about 15 years who is said to be mentally challenged. However, prima facie, it can be seen that although the incident is alleged to have happened in the field having a standing sugarcane crop, there are no injuries found on the person of the prosecutrix. The medical opinion as per the letter dated 15/5/2019 does not show that the victim was subjected to

forcible sexual intercourse. The investigation is complete and the chargesheet is filed. The applicant is in custody from 14/5/2019.

8. In this case having regard to Section 439(1A) of Cr.P.C., a notice was issued to the complainant and the complainant has filed an affidavit stating that the complaint was lodged under misconception and has expressed no objection for grant of bail. It is true that it is not always and in every case that such a concession or no objection, can be relied upon or considered, inasmuch as, as submitted on behalf of the State, this may in a given case, even amount to influencing the witnesses. The question would depend upon facts and circumstances of each case. The Court will have to look to the prima facie case and other relevant circumstances which are germane while considering a prayer for bail and in doing so such no objection given by the complainant can only be an additional circumstance which can be taken into consideration. In my considered view, in the present case, looking to the circumstances as noted earlier, prima facie reliance can be placed on the said affidavit. Looking to the over all circumstances, I find that discretion can be exercised in favour of the applicant. Hence, the following order-

ORDER

1. The applicant be released on bail, on executing a P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.
2. The applicant shall undertake to remain present before the Special POCSO Court on the dates of hearing, unless exempted.
3. The applicant shall not directly or indirectly make any attempt to contact / coerce / influence the complainant or victim or otherwise tamper with the prosecution evidence / witnesses.
4. Bail bonds to be furnished before the Special POCSO Court.
5. The observations made herein are of a prima facie nature and the learned Special Court shall not be influenced by the same at the trial.

6. The Criminal Application is disposed of in the aforesaid terms.

7. The parties to act on the authenticated copy of this order.

C.V. BHADANG, J.