

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

CRIMINAL BAIL APPLICATION NO.3410 OF 2019

Gajanan Jagannath Pore

..Applicant

Vs

State of Maharashtra

..Respondent

Mr.Vishwanath S. Talkute for the Applicant.

Mr.H.J. Dedhia, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

**DATE : 05th OCTOBER 2020
(Through Video Conference)**

PC.

1. The applicant is facing prosecution for the offence punishable under Section 376(I) and 377 of the Indian Penal Code and Section 4, 8, 12 and 42 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short), before the learned Special Judge at Pandharpur. The applicant has been arrested on 21st June 2019 and since then he is in jail.

2. The prosecution case as disclosed from the complaint of Shahista Attar, who is the mother of the victim who was at the relevant time studying in 05th standard and was aged about 11 years

is that the applicant used to call the victim on the pretext of being a playmate to his grand-daughter Savi. It is the material allegation that when the victim had gone to play with Savi the applicant had made an attempt to have unnatural sex with the victim.

3. In this case after investigation the charge-sheet is filed.

4. The learned Special Judge by an order dated 11th November 2019 has refused to release the applicant on bail.

5. I have heard the learned counsel for the applicant, the learned Additional Public Prosecutor and the learned counsel appearing for the respondent No.2/complainant. Perused record.

6. On hearing the learned counsel for the parties it *prima facie* appears that as per version of the complainant the applicant had allegedly attempted to have unnatural sex with the victim in the presence of his own grand-daughter. The learned counsel for the applicant submitted that this is highly improbable. It is submitted that the complaint is concocted. The learned counsel for the applicant submitted that the applicant at the relevant time was

traveling from Pandharpur to Pune and he returned on the next day to Pandharpur.

7. The learned Additional Public Prosecutor and the learned counsel for the respondent No.2 submitted that there is *prima facie* case of the applicant having indulged into the said offence. The learned counsel for respondent No.2 also pointed out that the medical report at this stage would not be relevant as the allegation would show that it was only an attempted sexual abuse of the victim. He also submitted that the plea alibi cannot be taken into consideration at this stage.

8. On careful consideration of the rival circumstances and the submissions made, I find that, at least *prima facie*, regard can be had to the submission on behalf of the applicant, about incident being improbable as applicant is alleged to have sexually abused the victim in the presence of his grand-daughter. At least *prima facie* at this stage, the medical opinion does not support any such allegation. The investigation is complete and the charge-sheet is filed. In that view of the matter the following order is passed.

ORDER

- (i) The applicant be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/-with one or two solvent sureties, in the like amount.
- (ii) The applicant shall undertake to remain present before the learned Special Judge during the trial.
- (iii) The applicant shall not enter Gopalpur area of Pandharpur where the victim is residing and shall not make any attempt to directly or indirectly to contact the victim and shall not otherwise tamper with the prosecution evidence/witnesses.
- (iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.
- (v) The bail bonds to be furnished before the learned Special Judge.
- (vi) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.