

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LDVC CRIMINAL BAIL APPLICATION NO. 559/2020

Shubham S/o Sunil Mahalle

-VERSUS-

State of Maharashtra

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P. R. Agrawal, Advocate for applicant.

Shri M. K. Pathan, Additional Public Prosecutor for State.

CORAM : VINAY JOSHI, J.

DATE : JULY 20, 2020.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard.

3. The applicant is arrested by the Police of Frezarpura Police Station, Amravati in Crime NO. 111/2020 for the offences punishable under Sections 376(3), 376(D), 506, 323, 342 of Indian Penal Code read with Sections 4 and 6 of the Protection of Children From Sexual Offences Act,

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2012 Act. It is a case of gang rape allegedly committed by the applicant and co-accused on 26.01.2020. Learned counsel for the applicant raised so many grounds and mostly harpended on the point of discrepancy in the medical evidence vis-a-vis to the oral statement of the victim.

4. Learned Additional Public Prosecutor resisted bail application on several grounds as contended in reply.

5. Interestingly, the bail order passed by the learned Sessions Judge on 04.06.2020, nowhere reflects the reasons for rejection of the bail. The said cryptic order runs into five paragraphs. The last para pertains to reasoning which only says that the learned Judge is of the opinion that this is not a fit case to use discretion. In-fact, it is expected from the Sessions Judge to consider all the submissions of both sides, express his opinion and decide bail application in either

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way. The approach of the learned Sessions Judge appears to be very casual. The bail order nowhere reflects due application of mind. In the circumstances, it is appropriate to redetermine bail application on merits, because in the eyes of law order dated 04.06.2020 of rejection of bail is no order at all.

6. At this stage, learned Advocate for applicant submitted that liberty be granted to approach the Sessions Court for grant of bail. I find this would be the appropriate course so that First Court would apply its mind on the aspect of bail. So also, it would convey a message to Sessions Court to decide bail application on merits rather than expressing mere opinion about fitness or non-fitness for bail.

7. Bail application stands disposed of accordingly. Liberty is granted to the application to approach to the Sessions Court for grant of bail.

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Learned Sessions Judge without considering his earlier order dated 04.06.2020, hear both sides and decide the bail application afresh on its merits within a period of two weeks from its institution. Needless to say that Sessions Judge shall pass reasoned order while deciding bail application.

8. At this stage, learned Additional Public Prosecutor seeks liberty to file additional material pertaining to medical report if made available.

9. Liberty is granted as prayed for.

10. This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Gohane.