

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 BAIL APPLICATION NO.110 OF 2021

NIVRUTTI VITHALRAO PAWAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.J. Salunke, Advocate for the applicant

Mr. S.B. Narwade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd MARCH, 2021.

ORDER :

1 Present applicant has been arrested in connection with Crime No.20/2020 dated 14.01.2020 by Gangakhed Police Station, Dist. Parbhani, for the offence punishable under Section 376(2)(n) of the Indian Penal Code and under Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. He has prayed for bail under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. S.J. Salunke for the applicant and learned APP Mr. S.B. Narwade for the respondent.

3 It has been vehemently submitted on behalf of the applicant that

the investigation is over and charge sheet is filed before the Special Judge bearing Special Case No.49/2020. It would take long time for the concerned Court to hold the trial. Applicant is aged 30. He has permanent place of abode. Informant is mother of the victim. The First Information Report informant states that on 12.01.2020 at about 8.00 p.m. she and her children including prosecutrix went to bed. Around 2.00 a.m. the prosecutrix got fits. The informant with the help of one Naikwade, went to the hospital at Limbla but the Doctor advised to take her to Parbhani. Accordingly, they reached to Parbhani around 3.00 a.m. As a result of the fits, the prosecutrix delivered a baby girl. The informant had no knowledge of the pregnancy of prosecutrix. The prosecutrix never told anything about it to the informant before. The crime was registered against the unknown person.

4 It has been further submitted on behalf of the applicant that he has no nexus with the alleged offence. He is falsely roped in the crime as an accused. On perusal of the FIR and charge sheet, it can be seen that the prosecutrix had delivered a fully grown child. The informant stated in the report that she had no knowledge of the pregnancy. It is unbelievable that the informant being mother of prosecutrix was unaware of the said pregnancy. On perusal of the entire charge sheet it can be seen that there is no evidence on record to show that the applicant has committed the alleged

crime. The huge delay caused in lodging the report create doubt on the truthfulness of the allegations against the applicant. There is no convincing evidence that prosecutrix was child. She was above 17 years of age, when the alleged offence took place and she seems to be a girl of understanding age. The prosecutrix conceived child out of alleged sexual assault. It is unbelievable that the mother of prosecutrix also did not notice the physical changes in the body of the prosecutrix during pregnancy. Allegations do not constitute offence of sexual assault. The applicant is in jail since more than one year. The custody of the applicant is not necessary as the investigation is over and the charge sheet has been filed.

5 Per contra, the learned APP strongly opposed the application and submitted that the applicant is aged 30. He is presumed to have every understanding capacity, but then the victim is minor. He has taken disadvantage of the innocence of the victim and committed sexual assault on her. The medical report of the victim supports the prosecution story. When there is sufficient evidence on record the applicant does not deserve any kind of sympathy.

6 The learned Advocate appearing for the applicant has relied on the order passed by this Court at Principal Seat in **Criminal Bail Application No.2632 of 2019, Anirudha Radheshyam Yadav vs. The State of Maharashtra,**

wherein after relying on the decision in **S. Varadarajan vs. State of Madras, AIR 1965 942**, the applicant therein, who was facing similar offence, has been released on bail. Per contra, the learned APP submitted that the facts of those cases were different and at that time the POCSO Act was not in force. Specific legislation has been enacted to protect the minors, and therefore, the same criterion need not be applied.

7 It is to be noted that the First Information Report is lodged by the mother of the victim. Sexual assault was committed by the applicant on victim. The father of the victim had expired prior to one and half years of lodging FIR. The mother of the victim was not aware about the said sexual assault. At the time of alleged offence her age was around 16. No doubt, now, the investigation is over and charge sheet has been filed, therefore, the further physical custody only for the purpose of investigation is not required. But, at the same time, now, we are required to consider what is the evidence, that is collected against the present applicant. Applicant is aged 30. In his bail application, there is no specific word or sentence, which states that he had love affair with the victim. Therefore, the said angle cannot be inferred. No doubt, the statement of the prosecutrix herself would show that on 28 or 29.03.2019, on the last day of 10th exam, she was taken by the applicant in a field and committed rape on her and threatened her not to tell about this at

your house. Due to fear she did not tell anybody. Thereafter, after about 10-12 days, when she had been to collect the firewood, again applicant committed rape on her. The DNA report concludes prosecutrix as mother and applicant as father of the child born to her on 13.01.2020. Therefore, there is ample evidence against the present applicant, apart from the recovery of the clothes, statements of witnesses and the panchnamas.

8 Therefore, when there is ample evidence against the applicant, he does not deserve discretionary relief to be released on bail. He was not supposed to take disadvantage of the innocence of the innocent girl. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

agd