

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

55 BAIL APPLICATION NO.115 OF 2021

Prasad s/o Dashrath Bhujbal
Age; 26 years, Occ; Educationh
& private Work,
R/o; Indiranagar, Lane No. 3,
Sangamber Tal. Sangamner,
District; Ahmednagar.

...Applicant
(Orig. Accused)

VERSUS

1. The State of Maharashtra
Through the Police Inspector,
Sangamner City Police Station,
Tal. Sangamner, Dist. Ahmednagar.

2. X.Y.Z. (Prosecutrix)
Through her father
Shankar s/o Shivram Gunjal,
R/o; Indiranagar, Lane No. 3,
Sangamner, Tal. Sangamner,
District; Ahmednagar.

...Non Applicants

...
Advocate for Applicant : Mr.Shermale K. N.
APP for Respondents-State : Mr.S.B. Narwade
Advocate for Respondent No. 2 : Mr.Mote Umesh S. For R.no. 2
...

**CORAM : SANDEEP K. SHINDE , J.
DATE : 29th July, 2021.**

P. C. :

1. Heard learned counsel for the applicant, complainant
(Respondent No. 2) and learned APP for the State.

2. Applicant seeks his enlargement on bail in connection

with Crime No. 1819 of 2020, registered with Sangamner City Police Station, Tq. Sangemner, District Ahmednagar for the offences punishable under Sections 376 (2) (f), 376 (2) (n), 323, 506 of the Indian Penal Code ('IPC for short) and Section 3 (A), 4, and 5 (j) (2) (l) (n), 6 of the Protection of the Children from Sexual Offences Act, 2012 ('POCSO' for short).

3. Victim is applicant's cousin sister. She is minor. She was subjected to aggravated penetrative sexual assault by applicant. DNA analysis revealed, the applicant and the victim were a biological parents of the 'fetus' of the victim. Applicant was apprehended on 4th October, 2020. Investigation in the case is over and the case is pending before Special Court.

4. Before the Sessions Court, when applicant applied for bail, victim had filed an 'affidavit' to state that she does not wish to proceed with the case and denied prosecution case. Learned trial Court declined the bail and therefore, this application is preferred before this Court.

5. I have perused the affidavit of the victim and of her father, sworn on 30th March, 2021. Paragraph No. 2 of the affidavit sworn by Shankar Shivram Gunjal, (the father of the victim) reads as under :

“02. That, I state and submit that my daughter has lodged first information Report which is in question against the applicant, I have already been filed my affidavit before learned Additional Sessions Court in regard of I have no objection to pass an appropriate order in favour of the applicant and the said affidavit may kindly be taken into consideration while deciding this application along with the affidavit of daughter. The true and correct copy of affidavit of my daughter is annexed herewith and marked as Exhibit R-1.”

6. Affidavit of the victim is to be kept out of the consideration, because yet she is a minor. However, in consideration of the peculiar facts, this Court vide order dated 19th July, 2021, directed the learned APP to verify the affidavit of victim's father after recording victim's statement. Accordingly a lady constable recorded a statement of the victim at her house, on 26th July, 2021 and produced before me. Victim would state, that she has no complaint against this applicant and she does not want to proceed with the case.

7. The facts of the case are absolutely disturbing; in as much as, at material time, the victim was 16 year and 11 months old. Even today she is a minor. The peculiar fact of the case is that the applicant is the real, cousin brother of the victim. Affidavit of victim's father Shankar Shivram Gunjal, convey that he does not want to proceed with the case, may be for the reason, continuation of proceeding would maline his and his daughter's reputation in the

society. Be that as it may, the statement of the victim, affidavit of her father and the submissions advanced by the learned counsel for the complainant, suggests that neither the victim nor the complainant intends to perpetuate ordeal of the victim. The investigation in the case is over and the case is pending before the Special Court. Although there is evidence on record to suggest the complicity of the applicant in the crime, the trial may not commence in the near future but applicant's presence in the trial can be secured by imposing conditions. In the above stated exceptional circumstances, applicant is granted bail. Hence the order :

8- (i) In the event of arrest of applicant in connection with Crime No. 1819 of 2020, registered with Sangamner City Police Station, Tq. Sangemner, District Ahmednagar for the offences punishable under Sections 376 (2) (f), 376 (2) (n), 323, 506 of the Indian Penal Code ('IPC for short) and Section 3 (A), 4, and 5 (j) (2) (l) (n), 6 of the Protection of the Children from Sexual Offences Act, he shall be released on bail on executing P.R. bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with one or more sureties in the like amount.

(ii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(iii). The applicant shall report to the Investigating Officer twice a month i.e. 1st and 3rd Monday of the month commencing from August, 2021, in between 11.00 a.m. to 1.00 p.m. till the charge is framed.

(iv) The applicant shall stay in the jurisdiction of another Police Station and preferably in another Taluka and shall not make any effort to establish contact either with the victim or her parents.

9. The learned counsel for the applicant is directed to amend the affidavits, to conceal the identify of the victim, it shall be done forthwith.

10. Application is allowed and disposed of.

(SANDEEP K. SHINDE)
JUDGE

mahajansb/