

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

BAIL APPLICATION NO.129 OF 2021

Sangram Vaijnath Sapkal = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.DM Hange,Advocate for Applicant;

Mr.AM Phule,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 1st March, 2021.

PER COURT :-

1. Present applicant has been arrested on 30.8.2020 in connection with CR No.190/2020 by Neknoor police station Tq. And District Beed for the offences punishable under Sections 376(2)(j), 376(2)(f)(i)(n), 506 of IPC and under Sections 3 and 4 of the POCSO Act. The present application has been filed under Section 439 of Cr.P.C.

2. Heard learned Shri Hange for the applicant and Shri AM Phule, learned APP for Respondent-State.

3. The prosecutrix is 16 years girl. It appears that she was in the Labour room of Government hospital, Ambejogai. At that time, she has lodged the FIR on 29.8.2020, contending that she was raped by the present applicant on 6.1.2020 around 10.00 to 10.30 am. It is contended that the present applicant is her cousin brother (paternal

uncle's son). After her said FIR, the investigation was carried out. Now, the investigation is over and charge sheet is filed.

4. It has been pointed out by the learned APP that apart from the FIR, in her statement under Section 164 of Cr.P.C., the informant – prosecutrix is consistent. Further, her parents are also consistent in their statements under Sections 161 and 164 of Cr.P.C. It can be seen from the statements of the parents of the prosecutrix that when the girl had no her menstrual cycle, at that time, she was taken to the Government hospital. At Government hospital at Neknoor, once or twice she was checked by medical officer and tablets were given. It is stated that it was the 5th month. But then they say that her menstrual cycle did not resume. But, then in August 2020 again when she was taken to the hospital under the supervision of the doctor, her tests were conducted, including sonography. At that time, it was told that the girl was carrying 7½ months of pregnancy. Thereafter, they made enquiry with the prosecutrix and came to know about the fact. Then it is stated that she was required to be admitted to the hospital on 28.8.2020, whereupon, the FIR came to be lodged. Even if we take their statement as it is, but then, it can be revealed that they had come to know about the pregnancy much earlier to 28.8.2020. But, still they had not lodged any report. Further, statement of Dr.Ghuge, who had examined the prosecutrix at Government Hospital at Neknoor, states that he had not noticed the symptoms of

pregnancy and he had treated the prosecutrix only on the complain of not getting her menstrual cycle and further, he says that he had got her urine test done. But it was negative at that time. But, then in the month of August, when the girl had again come to him, he became suspicious about the pregnancy. But, at that time, the girl as well as her parents had given an impression to him that there was no sexual intercourse between the girl and anybody. But, then he got the sonography of the girl done and then diagnosed that she is carrying. This approach of the prosecutrix and her parents is definitely required to be considered. The papers would further reveal that the prosecutrix have given birth of a female child. DNA test has been done and the report says that the prosecutrix is concluded to be the biological mother of the baby. However, the applicant is excluded biological father of the baby. Therefore, with this kind of evidence, charge sheet has been filed. Under the said circumstance, the applicant deserves to be released on bail. Prima facie facts are required to be considered and no observations can be made in respect of merits of the case. Hence, the following order, -

ORDER

- i. The Bail Application stands allowed.
- ii. The applicant be released on bail in connection with CR No.190/2020 by Neknoor police station Tq. And District Beed for the offences punishable under

Sections 376(2)(j), 376(2)(f)(i)(n), 506 of IPC and under Sections 3 and 4 of the POCSO Act, on his executing PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

iii. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv. The applicant shall not enter in Ratnagiri Tq. and District Beed till conclusion of the trial.

v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give his complete address of the place of his residence where he intends to reside till end of the trial.

vi. The applicant shall also give the said information to the Investigating officer along with mobile number and shall comply with the requirements in para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE