

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

924 BAIL APPLICATION NO.232 OF 2021

MAHESH DATTATRAY LANDAGE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicants : Shri Nitin T. Tribhuwan
APP for Respondent : Smt.R.P.Gaur

CORAM : M.G.SEWLIKAR, J.

DATE: 10th June, 2021

PER COURT:-

1. Heard.
2. The applicant has filed this application under Section 439 of the Code of Criminal Procedure for releasing him on bail.
3. The allegations against him in terms of the First Information Report (FIR) lodged on 05-10-2020 are that the informant, aged 15 years at the time of incident, was studying in 10th Standard in the year 2018. She was attending coaching classes for the subject Mathematics. The applicant used to ogle at her. He had once tried to speak to her. In the month of September, 2019, the applicant again tried to speak to the informant. The applicant gave his cellphone number to the

informant. They started talking on the cellphone. On 03-10-2020, the applicant and the informant decided to meet. At 01:00 p.m. the applicant was waiting on Jupiter two wheeler for the informant behind the house of the informant. They went to a row house near Poddar English School. He had sexual intercourse with her. Thereafter, he dropped her home. On the date of incident i.e. 04-10-2020, one Raman Kabra noticed the applicant and the informant when they were returning from Jagdamba Hotel. When the informant told the applicant that Raman Bhaiya was her neighbour, the applicant started driving the Scooter in speed. Raman Bhaiya started chasing them. Raman Bhaiya intercepted the vehicle of the applicant and took off the keys. Informant's father was called and thereafter, she lodged the report in the Police Station, on the basis of which Crime No.321 of 2020 under Sections 376(3), 354(D) of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'the POCSO Act') came to be registered against the applicant.

4. Heard Shri N.T.Tribhuwan, learned counsel for the applicant and Smt.R.P.Gaur, learned APP for the respondent State.

5. Shri Tribhuwan, learned counsel for the applicant argued that charge-sheet has been filed. He submitted that the report of Medico-legal Examination of the informant does not show sexual violence. In the said report there is nothing to show that the applicant inflicted physical/sexual violence on the informant and there were no injuries on the body of the informant to suggest physical violence. He submitted that the informant was of the age of understanding and was in a position to understand the consequences of her act. He submitted that the applicant and the informant are in love with each other. Only to teach a lesson to the applicant, false allegations are made against the applicant. He, therefore, prayed for releasing the applicant on bail.

6. Smt.Gaur, learned APP for the respondent State submitted that offence is serious in nature. The informant is of 15 years of age. She is a minor. Her consent is of no consequence. She submitted that the applicant had taken the informant to a row house and they stayed there for 15 to 20 minutes. The owner of the row house Mohammad Rafik Shaikh asked the applicant as to why he had brought the informant when the applicant had said on cellphone that the applicant was bringing his friend. She further stated that the applicant and the informant stayed in his

room for 25 minutes. She submitted that the informant has stated that the applicant had forceful sexual intercourse with her. The statements of the witnesses indicate that the applicant had brought the informant to the house of Mohammad Rafik Shaikh and they had stayed together for 25 minutes. Medico-legal Examination report shows that the applicant had committed sexual assault on the informant. She submitted that there is cogent evidence against the applicant and therefore, the applicant should not be released on bail. She, therefore, prayed for rejection of the application.

7. It is not in dispute that at the time of the incident, the informant was 15 years of age. Medical-legal Examination report indicates that there were no signs of physical and genital injury on the informant. The report does not show that the hymen of informant was ruptured or intact. That column is kept blank. In this view of the matter, it cannot be said that there is evidence of sexual intercourse with the informant/victim. It is pertinent to note that the informant had stated in her statement under Section 164 of the Code of Criminal Procedure that the applicant clicked her obscene photographs. However, subsequently, her statement under Section 161 of the Code of Criminal Procedure was recorded in which she stated that no such obscene

photographs were clicked. The applicant is a boy of 22 years. He is behind the bars since 5th October 2020. Entire investigation is complete and charge-sheet is filed. No fruitful purpose will be served by keeping him behind the bars especially in pandemic situation created due to Covid 19. In this view of the matter, I deem it appropriate to release the applicant on bail by putting condition that he should not try to establish any contact with the informant till conclusion of the trial.

8. In view of above, following order is passed:

ORDER

- i) Application is allowed.
- ii) Applicant Mahesh S/o. Dattatray Landage be released on bail in connection with Crime No.321/2020 registered with Gandhi Chowk Police Station, Dist.Latur for the offences punishable under Sections 376(3), 354(D) of the Indian Penal Code and Sections 4, 8 and 12 of POCSO Act, on furnishing PR Bond of Rs.50,000/- (Rs.Fifty Thousand only) with one solvent surety in the like amount and on the condition that till conclusion of the trial, he shall not contact the victim.
- lii) Application is disposed of.

(**M.G.SEWLIKAR**)
JUDGE