

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 BAIL APPLICATION NO.233 OF 2021

RAMESHWAR ATMARAM MALI

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. M.V. Salunke, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th MARCH, 2021.

ORDER :

1 Present applicant has been arrested, in connection with Crime No.189/2020 dated 19.04.2020 registered with Georai Police Station, Dist. Beed, for the offence punishable under Section 376(2)(f), 376(3), 341, 506 of The Indian Penal Code, 1860 and under Section 4, 8 and 12 of The Protection of Children from Sexual Offences Act, 2012. It appears that the investigation is over and charge sheet has been filed before the learned Special Judge under POCSO Act bearing Special Case No.30/2020. Present application has been filed for regular bail under Section 439 of The Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. M.V. Salunke for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that there is no direct evidence against the applicant. He is aged 21. He has permanent place of abode. He has no criminal antecedents. Applicant is the only bread earner of his family. He is falsely implicated in the offence. He is in jail since 19.04.2020. As the applicant is in jail, there is nobody to take care of his old aged parents.

4 It has been further submitted on behalf of the applicant that victim herself has lodged the FIR alleging that she has parents and two brothers. Parents of informant do sugarcane cutting work and at present they reside at Bhigwan, Pune. The informant was staying with her uncle at Pimpalgaon Kanada. On 10.12.2019 at about 9.00 a.m. informant went to school and while returning from school at about 12.00 noon applicant restrained her and forcefully taken her at dilapidated house. The informant refused and started shouting, but applicant threatened her to kill. Thereafter applicant had sexually assaulted the informant and threatened that if she discloses to anybody about the said incident he would kill her and her brother Dnyaneshwar. Thereafter, when she was suffering from stomach

pain, she went to hospital for medical assistance. It was disclosed by the doctor that she is five months pregnant and the pregnancy is terminated. Applicant is the relative of the informant. Now, the investigation is over and the charge sheet is filed before the Special Judge bearing Special Case No.30/2020, therefore, further physical custody of the applicant is not required. He, therefore, prayed for release of the applicant on bail.

5 Per contra, the learned APP strongly opposed the application and submitted that the applicant is aged 21. He is presumed to have every understanding capacity, but then the informant is minor. He has taken disadvantage of the innocence of the informant and took her in a dilapidated house and sexually assaulted the informant. The medical report of the victim supports the prosecution story. The DNA report concludes that applicant is the father of the fetus. When there is sufficient evidence on record the applicant does not deserve any kind of sympathy.

6 It is to be noted that the FIR has been lodged by the victim herself. It is specifically stated that informant is 15 years of age. 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 21. The

applicant had sexual intercourse with the informant and after the medical examination was done of the informant, it was found that she was pregnant of five months. The pregnancy of the informant appears to have been terminated. The DNA report of the fetus, applicant and the informant is positive and the opinion given is that the present applicant and the informant are concluded to be the biological parents of the abortus of informant. Therefore, there is ample evidence against the present applicant, apart from the recovery of the clothes, statements of witnesses and the panchnamas.

7 Further fact, that is, required to be noted from the FIR and statement of the informant is that while returning from the school, the applicant restrained the informant and took her in a dilapidated house forcibly by holding her hand and raped her and also threatened her to kill, and therefore, this amounts to active role played by him. Therefore, when there is ample evidence against him, 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.)