

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.311 OF 2021

BAJARANG S/O NAMDEO NAGULKAR

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S. B. Ghatol Patil, Advocate for the applicant.

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

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 6th April, 2021

ORDER :-

1. The applicant came to be arrested on 11.02.2021 in connection with Crime No.01 of 2021 dated 02.01.2021 registered with Goregaon Police Station, Dist. Hingoli, for the offences punishable under Sections 354, 506 of Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the 'POCSO Act'). The applicant has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. S. B. Ghatol Patil 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 applicant is a 61 years old person and has been falsely implicated by alleging that he has committed outraging of modesty of a girl of 8 years. Further physical custody of the applicant is not required since the allegations are such that it does not require any kind of discovery at the instance of the present applicant. He has cooperated with the investigation and major part of the investigation is over. It has been further submitted that provisions of Sections 7, 8 and 12 of the POCSO Act cannot be said to be made out against the applicant from the contents of the FIR. It is alleged that the applicant had caught hold of the hands of the victim, 8 years old child. Section 7 of the POCSO Act gives definition as to what amounts to sexual assault. Touching the specific parts of the body which have been enumerated with sexual intent amounts to sexual assault, but in that list catching hold of the hands is not included. Further, Section 354 of Indian Penal Code is also not attracted, as there are no allegations against the applicant that he had given threat to the victim to injure her reputation. Statement of the daughter of the informant i.e. victim has been recorded under Section 164 of the Code of Criminal Procedure at belated stage. Possibility of victim been tutored cannot be ruled out. The applicant has permanent residence and there is no question of he getting absconding. He,

therefore, deserves to be released on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that though the applicant is 61 years old person, he has tried to do some heinous crime. When the victim was playing with her brother, at that time, the applicant had taken her to his cattle shed and had manhandled the victim in such a manner which would definitely depict his sexual intent. Therefore, offence under the POSCO Act is made out. There are statements of witnesses who could see the conduct of the accused person immediately after the alleged incident. Thereafter, after making the child comfortable, information was extracted as to what had happened. It appears that the victim could hear the noise of informant, who is her mother and it had led the accused to leave the child. Otherwise, a serious crime would have been committed. The applicant and the witnesses are from the same village and, therefore, he does not deserve any sympathy.

5. At the outset, it can be said that merely because the applicant and the accused persons are from the same village, it cannot be the ground to reject the application. Major part of the FIR has been already reproduced and therefore, it is not reproduced once again. Suffice to say that the informant, who is the mother of the victim, states that she

was doing household work around 7.45 p.m. on 01.01.2021. She could find that in view of the darkness, it appears that she wanted to bring back the children in the house, who were playing in the courtyard. She could not find the victim and, therefore, asked her son as to where she has gone. Said son, who appears to be the younger brother of the victim, informed the informant that the victim has been taken by Bajrang Mama i.e. present applicant towards his cattle shed. Informant went there and in the meantime, it is stated that victim came out and she was in frightened condition. After making the victim comfortable, she told that she was taken by the present applicant in the cattle shed on the pretext of taking stems of toor crop. Thereafter, he caught hold of her both hands and it is stated that he was manhandling her. But, in the meantime, she could hear the voice of mother i.e. the informant and then applicant told the child that she should not disclose that he had brought her at that place. We need not go as to whether these statements or facts whether amount to sexual assault as defined in Section 7 of the POSCO Act or not for the simple reason that interpretation of the said Section would be on the basis of the evidence that would be led by the prosecution. Suffice it to say that the allegations, which could be seen from the FIR as well as statement of the victim, are that the applicant had caught hold of the hands of the victim.

Now, from the say of the investigating officer which is part of the police papers which have been made available to this Court, it appears that only the act of filing of charge-sheet is remaining. It is then contended that the informant and her husband have received threats to kill and for that purpose, they have given a complaint application on 07.01.2021. The Investigating Officer has not stated as to what action has been taken on that application. Merely by filing such application intermittently will not be a ground to refuse the bail. The further physical custody of the applicant is not required and it would take considerable time to stand his trial. Taking into consideration the age of the applicant, current situation of pandemic, he deserves to be released on bail. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) Applicant – Bjarang s/o Namdeo Nagulkar, who has been arrested in connection with Crime No.01 of 2021 registered with Goregaon Police Station, Dist. Hingoli, for the offences punishable under Sections 354, 506 of Indian Penal Code and under Sections 8 and 12 of the POCSO Act, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- III) He shall not tamper with the evidence of the prosecution in any manner.

- IV) He should remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.
- V) He should not indulge in any criminal activity.
- VI) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm