

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

27 BAIL APPLICATION NO.340 OF 2021

Banti alias Rohit s/o Bhagwat Pawar
Age: 19 years, Occu.: Student,
R/o. Bhagwat Chowk at Village
Takali, Taluka: Chalisgaon,
District: Jalgaon.

..Applicant

VERSUS

1. The State of Maharashtra
through the Officer Incharge,
Chalisgaon Police Station,
Chalisgaon, Taluka: Chalisgaon,
District: Jalgaon.
2. Dhiraj s/o Kamlakar Deshmukh
Age: 39 years, Occu.: Labourer,
R/o. Village Takali (Ward Chalisgaon),
Taluka: Chalisgaon, District : Jalgaon. ..Non-applicants/
Respondents
(No.1 - Prosecution
and No.2 - Original
Informant-father of
victim)

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Advocate for Applicant : Shri R.S.Deshmukh, senior counsel
alongwith Smt.Ashwini Sahasrabudhe i/b .
Shri Devang R.Deshmukh
APP for Respondent No.1-State : Shri V.M.Kagne
Advocate for Respondent No.2 : Shri Shriram V.Deshmukh h/f.
Shri Vishal A. Chavan

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CORAM : M.G.SEWLIKAR, J.

DATE: 30th August, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of

Criminal Procedure for releasing the applicant on bail.

2. Facts leading to this application are that, victim aged 9 years was cycling, at that time the applicant stopped him saying that he would take him for a movie. He forcefully inserted his genital into the mouth of the victim. This incident took place in front of a temple on 28th September, 2020 at 02:30 p.m. On these allegations Crime No.0246 of 2020 came to be registered with Chalisgaon Police Station, District Jalgaon under Section 377 of the Indian Penal Code and under Sections 4, 5(m), 6, 10, 12 of the Protection of Children from Sexual Offences Act, 2012.

3. Heard Shri R.S.Deshmukh, learned senior counsel for the applicant and Shri V.M.Kagne, learned APP for respondent No.1-State.

4. Shri Deshmukh, learned senior counsel for the applicant submits that CA report was received prior to filing of the charge-sheet. He submits that though Police Station had received CA report prior to the filing of the charge-sheet, since it was in favour of the accused, the Investigating Officer suppressed it and did not annex it with the charge-sheet. He submits that CA report clearly shows that no blood or semen was detected in the

swab from oral cavity of the victim. He further states that father of the victim has filed an affidavit in the Court of Sessions stating therein that the informant had filed the First Information Report (FIR) because of some misunderstanding.

5. Shri V.M.Kagne, learned APP for the respondent No.1-State submits that the FIR shows that the child had gargled after the incident. Therefore, the swab of oral cavity did not show traces of blood or semen. He further submits that there are eye-witnesses who have unequivocally supported the informant and who had chased the applicant and had apprehended him. He submits that having regard to all this, applicant may not be released on bail.

6. Charge-sheet is filed. Age of applicant is 19 years. He is behind the bars since 28th September, 2020. CA report is placed on record, which shows that no blood or semen was detected in the swab of oral cavity of the victim. Offence is not punishable with imprisonment for life or death. Moreover, informant has also filed an affidavit in the trial Court stating that he had lodged FIR because of some misunderstanding. Applicant is not likely to flee from justice. He will be available for trial. Considering the pandemic situation created due to Covid-19, I am inclined to release the applicant on bail. Hence, the order:

ORDER

- i) Bail Application No.340 of 2021 is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.0246 of 2020, registered with Chalisgaon Police Station, District Jalgaon, under Section 377 of the Indian Penal Code and Sections 4, 5(m), 6, 10, 12 of the Protection of Children from Sexual Offences Act, 2012.
- iii) Application is disposed of.

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

SPT