

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.356 OF 2021

Bapu @ Vikas @ Bapurao s/o Dnyanoba Parve ... **Applicant**

Versus

The State of Maharashtra ... **Respondent**

...

Mr. R. G. Hange and Mr. A. R. Hange, Advocate for the applicant.

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

...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 04.05.2021

Pronounced on : 08.06.2021

ORDER :-

1. Present applicant has been arrested on 28.04.2020 by Neknoor Rural Police Station, Dist. Beed in connection with Crime No.85 of 2020 for the offence punishable under Sections 376 (2) (F), 376 (2)(N), 376 (3), 506 of Indian Penal Code and Sections 4, 6, and 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act'). He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. R. G. Hange for the applicant and learned APP Mr. N. T. Bhagat for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the investigation is over and charge-sheet is filed. The evidence collected against the applicant would show that he has been falsely implicated. The informant is the sister of victim. Victim is stated to be aged 15 at the time of lodging the First Information Report (FIR). It has been contended by the informant that victim is mentally weak. They are staying with their mother and another sister. Their father works at Pune. Present applicant is distantly related to them from their mother's side and, therefore, he was on visiting terms. Victim had stomach ache and, therefore, was taken to a nurse on 25.04.2020. Said nurse suspected that the victim might be pregnant and, therefore, test was conducted. When it was realized that victim is pregnant, then she was taken in confidence and inquiry was made. Victim told that the present applicant had stayed overnight in their house on 15.10.2019 and committed rape on her in their house at night. She was threatened to kill if she would disclose the fact to anybody. Thereafter, on 2-3 occasions when applicant had come to their house, he had sexual intercourse with her.

4. After giving the story from the FIR, it has been further submitted by learned Advocate for applicant that the statements of witnesses are almost on same line, but improvements have been made on each

occasion by the victim. If we consider the spot panchnama, then it can be seen that the house of the victim consists of only one room. If all of them were sleeping in that room itself, then how applicant could have committed rape on the victim? None of the witness is saying that he/she was not present in that room on particular days, when alleged sexual intercourse was done. Though the medical report of the victim shows that she was pregnant, yet the DNA test excludes the applicant as biological father of the child. Therefore, when it is not his child, how it can be said that he had raped the victim. With this kind of evidence, applicant need not be kept behind the bars. It would take long time to stand his trial, therefore, he be released on bail.

5. Per contra, learned APP strongly opposed the application and submitted that entire investigation is complete, but taking into consideration allegations, evidence will have to be seen from that angle. The victim is consistent in saying that she was raped by present applicant. Victim became pregnant from him. Even if the DNA report appears to be not supporting prosecution, but it can be explained. Victim is aged only 15 and due the heinous act of the applicant, she has become mother. There is no reason mentioned in the application as to why applicant would be falsely implicated. He deserves no sympathy. The offence is against the society at large. If he is released on bail, then it

will give wrong message to the society.

6. At the outset, it can be seen that the investigation appears to be over and charge-sheet is filed. Further physical custody of the applicant is not required for the purpose investigation. Under these facts, we are required to consider as to what evidence has been collected by the investigating agency against the present applicant.

7. The FIR has been lodged by the sister of the victim. Contents of the FIR are already reproduced, hence not repeated here. The other witnesses from the same house have given almost similar statement. Whether in such a congested room, it was possible for the applicant to commit rape on the girl at night time, when others were also sleeping in the same room is a genuine question which has been raised. However, we may not go deep into that aspect at this stage. No doubt, none of those witnesses have stated about the absence of one another from the room on the particular day, nor the victim has stated that she and the applicant were the only persons in the room on that day. The fact remains at this stage is that victim is pregnant and she is aged 15 now. She says that she became pregnant from applicant; however the DNA test is not in favour of prosecution. Applicant has been excluded to be the biological father of the child born to victim. Under such

circumstance, with this kind of evidence, he need not be asked to remain in jail. It would take long time; though POCSO Act makes trial time bound, yet it would take some more period to come to end of trial. Therefore, the applicant deserves to be released on bail with appropriate conditions. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) The applicant – Bapu @ Vikas @ Bapurao Dnyanoba Parve, who has been arrested in connection with Crime No.85 of 2020 registered with Neknoor Police Station for the offences punishable under Sections 376 (2) (F), 376 (2)(N), 376 (3), 506 of Indian Penal Code and Sections 4, 6, and 8 of the POCSO Act, he be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- III) The applicant shall not tamper with the evidence of the prosecution in any manner.
- IV) He shall not indulge in any criminal activity.
- V) He shall not to enter the jurisdiction of Ambil Vadgaon till the conclusion of trial. He should reside elsewhere, and before

submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number to the concerned police station and the Trial Court.

VI) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm