

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

917 BAIL APPLICATION NO.734 OF 2021

Yogesh @ Aniket S/o Ramchandra Boinwad
Age: 28 years, Occu.: Education,
R/o. Shivaji Nagar, Mukhed, Tq.Mukhed,
Dist.Nanded. ..Applicant

VERSUS

1. The State of Maharashtra
Through Police Station Nanded Gramin,
Dist.Nanded.
2. Gajanan s/o. Topaji Hambarde
Age: 38 yrs. Occu.: Labour,
R/o. Vishnupuri,
Tq. & Dist.Nanded. ..Respondents

Advocate for Applicant : Shri Bharat N. Gadegaonkar
APP for Respondent : Shri S.W.Munde
Advocate for Respondent No.2 : Shri K.G.Gaikwad (Appointed)

CORAM : M.G.SEWLIKAR, J.

DATE: 16th November, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0840 of 2020 registered with Nanded Police Station, District Nanded under Sections 363, 366A, 376(D), 342, 354, 354A, 34 of the Indian Penal Code and under Sections 4, 6, 8, 12 and 17 of the Protection of Children from Sexual Offences (POCSO) Act.

2. Victim was 17 years and 3 months old at the time of the incident. First Information Report (FIR) was lodged on 9th December, 2020 alleging therein that the victim is the neice of the informant. The grandmother had scolded the victim, due to which the victim left the house on 8th December, 2020. On 9th December, 2020 she came back on her own. Thereafter, the informant, the maternal uncle of the victim, lodged the report expressing suspicion that somebody had kidnapped her. Statement of the victim was recorded, from which it was revealed that she had gone to a hotel named and styled as "Shri Gajanan Lodging and Boarding". She called one RK, whose full name she does not know. RK came there with two of his friends. The statement of the victim further shows that she was administered a pill owing to which she fell unconscious and thereafter, those three boys committed rape on her. It further reveals from the statement that turn by turn all the three boys committed rape on her. Thereafter, crime came to be registered against the applicant and two boys under the aforesaid Sections.

3. Heard Shri B.N.Gadegaonkar, learned counsel for the applicant, Shri S.W.Munde, learned APP for the respondent-State and Shri K.G.Gaikwad, learned counsel for respondent No.2.

4. Shri Gadegaonkar, learned counsel for the applicant submits that applicant has no concern with the offence. He states that the victim has made diagonally opposite statement in her statement under Section 164 of the Code of Criminal Procedure. The things which she had said in the statement under Section 161 of the Code of Criminal Procedure are omitted in her statement under Section 164 of the Code of Criminal Procedure. She has added some events which are not found in the statement under Section 161 of the Code of Criminal Procedure. He submits that medical evidence also does not support prosecution as regards rape.

5. Shri S.W.Munde, learned APP for the respondent-State and Shri K.G.Gaikwad, learned counsel for respondent No.2 state that room was booked in the hotel in the name of the applicant. They further submit that medical evidence shows that there was injury to hymen. They further state that statement under Section 164 of the Code of Criminal Procedure is in tune with statement under Section 161 of the Code of Criminal Procedure. Therefore, this is the case in which discretion cannot be exercised in favour of the applicant.

6. From the statement under Section 161 of the Code of

Criminal Procedure it appears that the victim was taken in a room at village Narsi. Her statement does not show that she was taken to a hotel. However, in the statement under Section 164 of Code of Criminal Procedure she has specifically mentioned the name of the hotel. Further, medical report shows that there was no evidence of penetrative sexual assault. It further shows that non penetrative sexual assault cannot be ruled out. From the statement of the victim it can be seen that she was knowing only her friend RK. She was not knowing the applicant and the other boy, who had allegedly raped her. Identification parade is not held. Having considered totality of the circumstances, discretion can be exercised in favour of the applicant. It is pertinent to note that the victim herself had called RK. Applicant is behind bars since 14th December, 2020. He cannot be detained behind bars for an indefinite period. From the evidence collected by the prosecution it cannot be said that there is a *prima-facie* case against the applicant as regards rape. Applicant does not have criminal antecedent. Nothing is brought on record to show that he will not be available for trial. In this view of the matter, following order is passed:

ORDER

- i) Bail Application is allowed.

ii) Applicant be released on P.R.Bond of Rs.15,000/- (Rs. Fifteen thousand only) with one solvent surety in the like amount, in connection with Crime No.0840 of 2020 registered with Nanded Police Station, District Nanded under Sections 363, 366A, 376(D), 342, 354, 354A, 34 of the Indian Penal Code and under Sections 4, 6, 8, 12 and 17 of the POCSO Act.

iii) Bail Application is disposed of.

iv) Fees of learned counsel (appointed) for respondent No.2 is quantified as Rs.5,000/- (Rs.Five thousand only). This is to be paid through the High Court Legal Services Authority, Sub-Committee, Aurangabad.

v) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

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