

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

**924 BAIL APPLICATION NO.720 OF 2021
WITH APPLN/1309/2021 IN BA/720/2021**

**ASHWAJEET ANIL ATHWALE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. G. P. Shinde, Advocate for the applicant
Shri. P. G. Borade, APP for the respondent/State
Shri. M. M. Parghane, Advocate for respondent No. 2.

CORAM : M. G. SEWLIKAR, J.

DATED : 28th OCTOBER, 2021

PER COURT :-

1. Heard.
2. It is alleged in the FIR that on 4th April, 2021 at 9.30 p.m. the informant aged 14 years was sitting on motorcycle in front of his house. At that time applicant, who is neighbor of the informant, came there, physically lifted informant after gagging his mouth and took him in his house. It is alleged that applicant disrobed the informant then applicant took off his clothes and forcefully made informant to suck his genital. It is further alleged that

applicant entered into carnal intercourse with the informant.

3. FIR came to be lodged on 5th April, 2021 on the basis of which offence under Sections 377, 506 of the Indian Penal Code and under Sections 4 & 8 of the POCSO Act came to be registered.

4. Learned counsel Shri. Shinde for the applicant submits that the family of the applicant and the family of the informant are not on good terms. In the year 2004, a criminal case was filed under Section 376 of the Indian Penal Code against the family members of the applicant in which applicant's family members came to be acquitted. He further submits that soon thereafter this complaint came to be filed. He submits that just to settle the scores, this false complaint has been filed. He submits that medical report does not support the prosecution. He further submits that if applicant is released on bail, he will not enter the territorial limits of Nanded district.

5. Learned APP Shri. Borade and learned counsel Shri. Parghane submit that offence is serious in nature. If applicant is released on bail he will pressurise the witnesses.

6. Informant is 14 years of age. Medical report shows that the Medical Officer could not opine whether there was penetration in the anus of the informant. The medical opinion further shows that semen stains were not found in the anus of the informant. CA report is still awaited. Having considered the medical report, I deem it appropriate to release applicant on bail. To allay the fear of the prosecution, stringent conditions can be imposed on the applicant. In view of this, following order is passed.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 40,000/- (Rupees Forty Thousand only) with one solvent surety in the like amount in connection with CR No. 0032 of 2021 under Sections 377 and 506 of the of the Indian Penal Code and under Sections 4 and 8 of the POCSO

Act registered with Barad Police Station, Dist. Nanded and on condition that he shall not enter the territorial limits of Nanded district till the conclusion of the trial except for attending trial.

3. Application is disposed of.
4. Pending application, if any, stands disposed of.
5. 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, J.]

ssp