

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

17 BAIL APPLICATION NO.817 OF 2021

**SOMNATH BHANUDAS MHASKE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. A. S. Gandhi, Advocate for the applicant
Shri. S. W. Munde, APP for the respondent/State
Shri. Harish S. Bhambare, Advocate h/f Smt. Sunita G.
Sonawane, Advocate for respondent No. 2.

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th 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. 024 of 2021 registered with Nagar Taluka Police Station, Ahmednagar for the offences punishable under Sections 376(2)(F), 376(2)(J) of the Indian Penal Code and under Sections 5(J)(2), 5(L), 5(N), 6(i), 8, 9(L) 9(N), 4(2) of POCSO Act.

2. Informant aged 16 years lodged the FIR alleging therein that the applicant is her distant uncle. On 14th

February, 2020 at 1.00 p.m. when the informant was on her way to her field, applicant took her to a field and had sexual intercourse with her against her will. This incident was again repeated on 4th July, 2020. On 4th July, 2020 he had intercourse with her twice. In the month of January, 2021, the informant was taken to Chikitsa Hospital, Ahmednagar wherein it was revealed that she was pregnant of six and half months i.e. of 27 weeks. Therefore, the informant lodged the First Information Report on the basis of which offence under Sections 376(2)(F), 376(2)(J) of the Indian Penal Code and under Sections 5(J)(2), 5(L), 5(N), 6(i), 8, 9(L) 9(N), 4(2) of POCSO Act.

3. Learned counsel Shri. Gandhi submits that charge-sheet is filed. He submits that there was a love affair between the applicant and the informant. He submits that the alleged intercourse was with her consent. He further submits that the informant was more than 15 years of age at the time of the incident and she was in a position to understand the consequences of her act. Therefore, since

charge-sheet is filed and applicant has no criminal antecedents, applicant be released on bail.

4. Learned APP Shri. Munde for respondent/State and learned counsel Shri. Bhambare h/f Smt. Sonawane, learned counsel for respondent No. 2 submit that DNA report is received which confirms that applicant is the biological father of the child.

5. DNA report is received which shows that applicant is the biological father of the fetus. The informant was 15 years of age at the time of the incident. The applicant, at the time of the incident, was a grown up man of 28 years. Applicant being minor was not of consenting age for the alleged sexual intercourse. Considering the seriousness of the offence, I am not inclined to release the applicant on bail. Hence the application is dismissed.

6. Learned counsel Shri. Gandhi seeks liberty to make the application for regular bail before the trial Court

after recording the evidence of the applicant.

7. Applicant is at liberty to make the application after recording the evidence of the informant.

[M. G. SEWLIKAR, J.]

ssp