

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

BAIL APPLICATION NO.1102 OF 2020

Rahul @ Bombalya s/o
Dattatraya Rokade = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.Gajanan G.Kadam, Advocate for Applicant;

Mr.SY Mahajan, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 15th January, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.103/2019 registered with Shrigonda Police Station, District Ahmednagar, dated 28.1.2019, for the offences punishable under sections 376, 506 of IPC and under sections 4, 7 and 9 of POCSO Act, and, therefore, he has filed the present bail application under Section 439 of Cr.P.C.for bail.

2. Heard learned Advocate Shri Kadam for applicant and learned APP Shri Mahajan for Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that investigation in the crime is complete and charge sheet has been filed before the Special Judge, therefore, further

custody of the applicant is not required for the purpose of investigation. The applicant is 20 years old boy taking education. He has been falsely implicated. There was no eye-witness to the incident and it is also not dependent on circumstantial evidence. There is absolutely no incriminating material to connect the applicant with the alleged crime except vague allegations. Medical report is not supporting the prosecution. All the statements recorded by Police under Section 161 of Cr.P.C. are after-thought and stereo-type. In her FIR, the informant has stated that she was taken in old school by gagging her mouth by the applicant and after the rape was committed, when she shouted, her maternal aunt came there and then the applicant ran away. However, if we see the statement of the informant, recorded under Section 164 of Cr.P.C., then it can be seen that she has given a different version. Further, if we see the history given by her before the Medical Officer, wherein she states about even earlier act by the applicant and on the day of the incident, it is stated that her mouth was pressed and, therefore, she could not shout. The maternal aunt's statement depicts a different story. She says before the police that after hearing shouts of the informant, she went to the place; whereas in her statement under Section 164 of Cr.P.C., she states that she went to the place after she heard the noise of kicks on the door and when she knocked the door, the accused came out and fled away by slapping and kicking her and thereafter she brought the

informant prosecutrix to the house. Thus, the versions are different. With this kind of evidence, the applicant need not be kept in jail. There is previous enmity between family members of the applicant and the informant as it could be found from CR No.122/2018 lodged with the police station. There are no criminal antecedents of the applicant and he is ready to abide by the terms of bail. It was also submitted by the learned Advocate for the applicant that though having medical certificate, she has not given, this Court, by its order passed on the earlier date, had directed APP to collect the same.

4. Per contra, learned APP submitted that the present applicant has committed heinous crime and, therefore, his age need not be considered. He knows about the consequence of his acts. Even if the contents of the FIR; the statement of the informant under Section 164 as well as her aunt's statement under Section 161 as well as 164 of Cr.P.C. are considered; yet the basic fact, which they want to convey that the informant was ravished by the present applicant, cannot be ruled out. The medical certificate earlier given as well as final action states that sexual assault cannot be ruled out. So also the Medical Officer had noted four injuries on persons of the informant, especially contusions of the back. The evidence that is collected against the present applicant is sufficient and it disentitles the applicant from getting bail.

5. At the outset, it can be seen that since charge sheet has been filed before the learned Special Judge in POCSO Act, the physical custody of the present applicant is not required for the purpose of investigation. The application thus will have to be considered on merits of the case, i.e. on the basis of the material that is placed in the charge sheet. Perusal of the FIR would show that the incident had taken place after 3.00 pm when the prosecutrix was returning to her school after having lunch in recess at her home. She was dragged by the present applicant by gagging her mouth in the bath-room of the old school nearby and thereafter she has been ravished. No doubt, she says that at that time, the applicant was in drunken condition but no advantage can be given to the applicant at this stage by saying that he was unable to know as to what are the consequence of his acts. She further states that as she shouted loudly, her matrimonial aunt, who was passing by the road at that time, came towards her and the applicant fled away and after taking her to the house and informing her mother and other near relatives, she has lodged the report on the same day. Therefore, there is no substantial delay in lodging the report. As regards the contention of false implication is concerned, it is for the applicant-accused to prove it at the time of final hearing. Merely there might be a criminal complaint, involving somebody from family, does not *ipso facto* infer enmity and false implication. The alleged differences in the story by the informant

and her aunt, do not take away the main allegation about the rape by the present applicant. It is also to be noted that the informant was aged only 11 years when the incident took place. Further piece of evidence against the present applicant is the medical certificate. Along with charge sheet, provisional report was given and now with the police papers final medical opinion has been given which gives details regarding sexual violence. It is stated that there was penetration in the genital area by penis. Further it states about the time as 6-7 hours approximately. There were four injuries noted on the back of the informant. Examination of labia majora showed complete bleeding and lastly it is stated that sexual assault cannot be ruled out. Thus, when such heinous crime has been committed age of the applicant will have no priority. At the same time, age of the victim, on whom these atrocities have been committed, is required to be considered.

6. Therefore, taking into consideration the material that is placed along with the charge sheet, the applicant is not at all entitled to be released on bail. Hence, the bail application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE