

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.855 OF 2021

DATTA S/O RAMBHAU TURUP
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. S. S. Thombre
APP for Respondent-State : Mr. A. M. Phule
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30-08-2021.

ORDER :

1. Applicant has been arrested in connection with Crime No.281 of 2020, registered with Sambhaji Nagar, Parli Vaijnath Tq. Parli Vaijnath District Beed, for the offences punishable under Section 354-A, 354-D, 452, 336, 143, 149, 323, 504, 506, 188 of the Indian Penal Code, under Section 8 and 12 of The Protection of Children from Sexual Offences (POCSO) Act, 2012, Section 51 (1) (b) of the Disaster Management Act, 2005, Section 17 of the Maharashtra Police Act, 1951 and Section 11 of the Maharashtra COVID-19 Regulation, 2020. Earlier he had filed Bail Application No.1148 of 2020 before this Court and it was withdrawn on 14-10-2020. Thereafter, he again filed an application under Section 439 of Code of Criminal Procedure vide Bail Application No.1439 of 2020 which was rejected by this Court on 28-

01-2021. Thereafter, again he filed Regular Bail Application No.284 of 2021 which was withdrawn by him on 06-05-2021. Thus, he is again praying for his release under Section 439 of the Code of Criminal procedure.

2. Heard learned Advocate Mr. S. S. Thombre for the applicant and learned AGP Mr. A. M. Phule for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that now the charge-sheet is received and if we consider the birth certificate of the victim, she would be 18 years 2 months old on the date of the offence, therefore provisions of the Protection of Children from Sexual Offences (POCSO) Act will not be applicable. The applicant was arrested on 25-08-2020 and for the substantial period he is in jail. He is aged 24 and, therefore, deserves to be released on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that all the facts and circumstances were considered by this Court when the earlier application was rejected. Even if we consider that taking into consideration her birth certificate she would be major, yet the other sections under which the offence has been

registered, are also equally serious. Those facts have also been considered. Further, this Court has also considered that two offences are already pending against the present applicant and there were attempts to threaten the witnesses after the registration of this offence, a non-cognizable complaint was registered in that respect. If the applicant is released on bail, there would be a threat to the life of the witnesses.

5. At the outset, a detailed order was passed by this Court while rejecting earlier Bail Application No.1439 of 2020 on 28-01-2021. Even at that time, the charge-sheet was filed and the circumstances were also noted by this Court in Paragraph No.2. On behalf of the applicant also, it was tried to be submitted that since the investigation is complete and a charge-sheet is filed, custody is not required. The documents were considered by this Court. Though it appears that the birth certificate was not pointed out in a specific way by the learned Advocate who was then representing the applicant and it may be taken into consideration now the fact remains that the earlier order was passed by this Court rejecting the application; after filing of the charge-sheet. At the most, taking into consideration the birth certificate of the victim, she appears to be

the major girl, and therefore, provisions of POCSO Act may not be applicable, however, the offence under the other Acts would remain.

6. Perusal of the earlier order passed by this Court shows that the allegations in the First Information Report and the evidence in the form of statements of witnesses and other facts were considered. It was also considered that after the registration of the offence, there was an attempt to threaten the witnesses. A non-cognizable complaint was registered against Rohidas Manik Bansode (Father of the co-accused Periyar @ Pritam Rohidas Bansode), Baburao Ajuba Indarkar (Father of the co-accused Santosh Baburao Indarkar), and Rambhau Turup (Father of the present applicant/accused) on 25-08-2020 at about 11.00 a.m. Thereafter, the informant victim herself had lodged a non-cognizable complaint on 05-11-2020 for giving threats to her and asking her to withdraw the complaint. It is the allegation that the present applicant and co-accused Pritam Bansode used to follow the victim either by walk or on the motorcycle and used to utter obscene words. The present applicant is also involved in Crime No.84 of 2017, registered with Parli City Police Station, Parli Vaijnath for the offences punishable under Section 324, 323, 336, 504, 506 read with 34 of the Indian

penal Code, so also in Crime No.159 of 2016 for the offence punishable under Section 324, 323, 504, 506 read with 34 of the Indian penal Code. This Court had also considered the manner in which the offence is stated to have been committed against the minor and her family members, and especially when ladies no male member is in their family. It was observed that such incidents will have to be viewed seriously. Therefore, when the earlier application was rejected on merits that too after the filing of charge-sheet and now there is no change in the circumstances, no case is made out to take a different view now. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

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by GAWADE
VIRENDRA J
Date: 2021.09.04
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