

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 BAIL APPLICATION NO.1187 OF 2020

Swapnil B. Shrungare
Age : 30 years, Occu : Service,
R/At : Ganganagar, Sangli,
Nanded.

...Applicant/
Orig.Accused

Versus

1. The State of Maharashtra,
Through Vimantal Police Station.

2. Babu Chandrakant Dhavle,
Age : 39 years, Occu: Business
R/at : Maltekdi, Dist. Nanded.

...Respondents

Mr Prasanna Dadpe h/f Mr Rajendra Anbhule, Advocate for
Applicant
Mr A.M. Phule, APP for Respondent No.1-State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 3rd DECEMBER, 2021

PER COURT :

1. The applicant a school teacher is seeking bail in connection with Crime No. 40/2020 registered with Vimantal Police Station for the offence punishable under sections 376 (2) (f), 376 (2) (n), 376 (3), 354, 354(b), and 506 of IPC and Sections 4, 6, 8, 10, 12 and 18 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act").

2. The father of the victim girl namely, Babu Chandrakant Dhavle, resident of Maltekdi, Dist. Nanded lodged FIR with the Police Station on the basis of narration given by his daughter aged about 9 years. At the

relevant point of time, she was taking education in 4th Std. in the school namely, Prabodhan Primary School, Maltekdi, Nanded.

3. According to the allegations made in the FIR, the victim and her girl friends are studying in the same school. The applicant/accused happened to be the teacher in the same school. The victim girl disclosed to her parents about indecent behaviour in the class by the applicant/accused. It is alleged that the applicant/accused sexually harassed and assaulted to the victim girl. Not only that, the applicant/accused alleged to have behaved in a indecent manner with other girls also as narrated by their parents.

4. The father of the victim girl went to the school and met with the Head Master and disclosed about the indecent behaviour by the applicant/accused with the victim girl as other girls studying in the school.

5. On the basis of FIR lodged by father of the victim girl, applicant/accused came to be arrested on 03.02.2020 in connection with the above said crime. His clothes came to be seized under panchanama. The mobile which was being used by the applicant also came to be seized.

6. The Investigating Officer has recorded statements of victim girls as well as their parents. It was revealed during the course of investigation that the applicant behaved with victim girl as well as other girls from the same class in a very indecent manner and alleged to have committed serious offences under the Indian Penal Code as well as offences under the POCSO Act.

7. The Investigation Agency has filed the charge sheet against the applicant/accused. The case is now registered as Special Case (POCSO Case) No. 44/2020. It is stated that charge is yet to be framed.

8. Heard Mr Dadpe, learned counsel for the applicant/accused holding for Mr Rajendra Anbhule and Mr A.M. Phule, learned APP for the State at length.

9. The applicant is seeking bail mainly on the ground that investigation is completed and charge sheet is filed and there is no need to keep the applicant behind the bars and secondly, if the statements of victim girl and other girls are perused, coupled with their supplementary statements a doubtful picture is emerging whether in reality such a incident had happened in the said school.

10. Mr Dadpe, learned counsel for the applicant vehemently submitted that it is very difficult to digest that the teacher in the school has committed heinous act with girl students, if the statements of concerned victim girls and other girls are taken into consideration with their supplementary statements. There is variance between the statements of victim girls with their supplementary statements. There is material contradiction about the alleged incident if their supplementary statements are perused. It raises serious question mark about the alleged incident which has been projected by the Investigation Agency.

11. He submitted that the applicant is a victim of dispute with the management. He has been falsely implicated in this case. There is absolutely no evidence to that effect.

12. Mr Dadpe, learned counsel for the applicant further invited my attention to the statements of girl students with their respective supplementary statements in order to show as to how they have departed from their original statement. He submitted that the whole story is concocted. The applicant/accused is a teacher by profession. He is ready to abide by the conditions if imposed by this Court while releasing on bail. There are no extra ordinary circumstances to reject bail to the applicant, who is teacher by profession. The trial court would take its own time and it may not be appropriate to keep him behind the bars till the conclusion of the trial.

13. Per contra, Mr Phule, learned APP for the State strongly opposed to grant bail to the applicant. He submitted that the applicant is serving as a teacher in Prabodhan Primary School. The victim girls are also studying in the same school. The daughter of the first informant as well as other girl students from the same class had complained about indecent behaviour of their teacher/applicant in the class room. He invited my attention to the copy of FIR as well as statement of witnesses recorded by the Investigating Officer and pointed out that the acts complained against the accused attracts serious offences under IPC and POCSO Act. He submitted that the intention of the applicant needs to be considered. There is no reason for the girl students to make the complaint against the

applicant alone when there are other male teachers working in the school.

14. Mr Phule, learned APP for the State submitted that the applicant is involved in heinous offences attracting even the provisions of the POCSO Act coupled with the penal sections of the IPC. Even though charge sheet is filed, it is not a fit case to release the applicant on bail having regard to the heinous offences.

15. Mr Phule, learned APP has also referred recent judgment of the Hon'ble Supreme Court in Criminal Appeal No. 1410/2021 coupled with connected criminal appeals. He submitted that the Hon'ble Supreme Court has made interpretation as to how the sections under the POCSO Act need to be interpreted in the light of the object of the Act. He submitted that the victim girl and other girl students are of tender ages and they had no reason to state such indecent behaviour of the applicant.

16. Mr Phule, learned APP for the State further referred the citation in case of ***Pralhad Singh Bhati Vs. N.C.T. Delhi reported in 2001 AIR (Supreme Court) 1444***. He invited my attention to the said citation more particularly the guidelines laid down by the Hon'ble Supreme Court regarding grant of bail under section 439 of Cr.PC. He submitted that the applicant alleged to have committed serious and heinous offences and girl students are supporting to the prosecution case.

17. Having regard to the peculiar facts of the case in hand and in view of the guidelines laid down by the Hon'ble Supreme Court in above referred citation in ***Pralhad Singh Bhati***, the application needs to be

rejected.

18. Having regard to the argument advanced by the learned counsel for the applicant and learned APP for the State, I have gone through the copy of FIR and the material annexed with the charge sheet. It is not in dispute that at the time of alleged incident, the applicant was working in the school namely, Prabodhan Primary School as a teacher. The victim girl and her girl friends are studying in the same school and class. The applicant happened to be the teacher of the same class where the girl students are studying. The father of one victim girl has put the criminal law in motion by lodging the FIR with the Police Station by narrating all the details about the heinous act committed by the applicant with his daughter as well as her girl friends in the class room.

19. It may not be appropriate to give the details about the said indecent behaviour allegedly made by the applicant. If one would peruse the statements of victim girl and her girl friends, then, it would be very shocking and disturbing as to how a teacher can behave with his girl students in the class room. A teacher is supposed to be the custodian of the students when parents sent their wards in the school. The parents expect that their wards would remain safe in the hands of the teachers. Such faith is upon the teachers. If the statements of victim girl and the statements of other girl students are perused, then one may find how that faith is broken.

20. Mr Dadpe, learned counsel for the applicant took me through the statements of victim girl as well as other girl students with their

respective supplementary statement and attempted to point out as to how their statements are contradictory at material point.

21. At this stage, that exercise is not permitted. At the time of trial, that exercise would be done when the witness is put in the witness box. Whatever statements on record need to be seen and considered with other material collected during the course of investigation. On perusing the material annexed with the charge sheet, there is prima facie evidence in the nature of statements of witnesses. It is difficult to accept that the applicant is a victim of dispute with the management of school in absence of any material. There are other male teachers in the school. The girl students have not made any complaint against them. They had complained about indecent behaviour of the applicant alone. The girl students appear to be of tender aged. They seem to be innocent. At this stage, it may not be proper to overlook their statements apart from their variance of supplementary statements.

22. The applicant is slapped with serious offences under the IPC as well as penal provisions of the POCSO Act, 2012. Section 8, 10 and 12 provides punishment. Section 7 deals with sexual assault defining that whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault. Section 8 provides sentence for committing of sexual assault. Section 10 provides punishment for aggravated sexual assault

and section 11 pertains to sexual harassment.

23. There is statutory presumption under section 29 and 30 of the POCSO Act, 2012. The object of the said Act cannot be overlooked. It is a special enactment passed by the Parliament in order to protect the children from the sexual offences. The act of touching sexual part of body or any other act involving physical contact, if done with sexual intent would amount to sexual assault within the meaning of section 7 of POCSO Act as held by the Hon'ble Supreme Court very recently while deciding the Criminal Appeal No. 1410 of 2021 with the connected criminal appeals.

24. In case of ***Pralhad Singh Bhati Vs. N.C.T. Delhi***, the Hon'ble Supreme Court has laid down the parameters for grant of bail under section 439 of Cr.PC. The following are the factors to be considered for grant of bail :-

- (i) The court has to keep in mind the nature of accusations.
- (ii) The nature of evidence in support thereof.
- (iii) The severity of the punishment which conviction will entail.
- (iv) The character, behaviour, means and standing of the accused.
- (v) Circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with.
- (vi) The larger interests of the public or State and similar other considerations.
- (vii) It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of

bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.

25. The Hon'ble Supreme Court in said decision in para No. 8 has observed as under :-

The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

26. In case of ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav reported in 2004 AIR (Supreme Court) 1866***, the Hon'ble Supreme Court has summed up the law of Bail as under :-

(1) Court granting bail should exercise its discretion in a

judicious manner and not as a matter of course.

(2) Court to indicate reasons for grant of bail – Elaborate examination of merit of case need not be undertaken.

(3) Any order devoid of such reasons would suffer from non-application of mind.

(4) Court further to consider :-

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) *Prima facie* satisfaction of the Court in support of the charge.

(5) Accused has right to make successive applications for bail – In case where earlier bail application was rejected Court will have to specify reasons why subsequent bail application was granted. 2002(2) RCR (Criminal) 250 (SC) relied.

27. Having regard to the guidelines laid down by the Hon'ble Supreme Court in the above referred citations, if the facts of the case in hand coupled with the material annexed with the charge sheet are taken into consideration, the applicant is allegedly involved in the heinous offences.

28. It is true that the investigation is completed and the charge sheet is filed, but in view of the parameters laid down by the Hon'ble Supreme Court in the above referred citations when the applicant is alleged to have committed heinous and serious offence, not entitled to get bail though he is behind the bars since 03.02.2020. The witnesses are tender aged girl students. There is every possibility of tampering of witnesses if applicant is released on bail. By taking into consideration over

all the facts of the case in hand and the prima facie case made out by the prosecution, the applicant is not entitled to get bail. His prayer for bail needs to be turned down. His trial can be expedited by giving necessary directions to the concerned Special Court under the POCSO Act.

ORDER

- (I) The bail application is hereby rejected.
- (II) The Special Court dealing with the cases under the Protection of Children from Sexual Offences Act, 2012 is hereby requested to frame the charges against the applicant as expeditiously as possible within a period of two months from today and commence the trial.
- (III) The Registrar (Judicial) of this Court is requested to communicate this order to the concerned Court for compliance.
- (IV) The bail application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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