

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1501 OF 2020

Suyesh s/o Madhavrao Joshi,
Age 25 years, Occupation Service,
R/o Balsur Tq. Omerga District
Osmanabad.

**...Applicant
(Original Accused)**

VERSUS

The State of Maharashtra.

...Respondent

.....
Advocate for Applicant : Mr. V. R. Dhorde
APP for Respondent-State : Mr. S. B. Narwade
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
08-03-2021.**

**Date of Pronouncing The Order :
06-04-2021.**

ORDER :

1. Present applicant is the original accused No.2 who came to be arrested on 18-01-2019, in connection with Crime No.14 of 2019, by Police Station, Lohara District Osmanabad, for the offence punishable under Section 376 (2) (d), 376 (f), 376, 377, 376 (2) (n) of the Indian Penal Code and under Section 3, 4, 5 (c), 5 (d), 5 (f), 5 (i), 6, 7, 8, 12, 11 (3), 11 (4), 11 (6) of the Protection of Children From Sexual

Offences Act. He has filed present application under Section 439 of Code of Criminal Procedure.

2. It will not be out of place to mention here that this is his second application before this Court. He had earlier filed Bail Application No.1181 of 2019, which came to be withdrawn by him on 18-11-2019.

3. Heard learned Advocate Mr. V. R. Dhorde for applicant and learned Additional Public Prosecutor Mr. S. B. Narwade for respondent-State.

4. It has been vehemently submitted on behalf of the applicant that the applicant is serving as Agriculture Supervisor with Dnyanprabodhini Krushi Tantra Vidyalaya, Harali since June 2017. He has no concern with the victim. He was neither appointed or deputed for any work with the residential school of the victim. He has been falsely implicated in view of the dispute between the management of the school. The informant has smartly made him as a scapegoat on account of the bad reputation caused to the institution due to her own misdeeds and irresponsible conduct of her husband. If the First Information Report is perused as it is, then it

can be seen that it is filed by the Principal of the said college i.e. Dnyanprabodhini Krushi Tantra Vidyalaya, Harali. It is stated that Dnyanprabodhini Samajik Sanghatana is a Non-Government organization. They undertake to provide education and residential accommodation to about 33 girls and 110 boys. The victim who is a minor girl is taking education by staying in the residential accommodation of the institution since 2016. Her intelligent quotient is less. The informant states that on or about 15-01-2019 her husband told her that the grandmother of the victim disclosed to him that some untoward incident has happened with the girl in the residential are and, therefore, inquiry should be made. Thereafter, the informant had called the victim on 16-01-2019 and asked her about the incidence. Thereafter, the victim disclosed her about the alleged rape committed on her in 2016 by uncle (husband of maternal aunt) at the house of the aunt at Tuljapur. Then in 2018 it is stated that one Vikram Kajale, working as peon in the Dnyanprabodhani school, had ravished the girl in his house. It is also then disclosed by her that the drawing teacher Vijay Toradkar had sexually assaulted the girl in between end of 2017 and in the beginning of 2018. So also in the winters of 2018 one Jamdade Sir had sexually assaulted her, and in 2018 around Diwali Festival the

present applicant had taken her to room No.9 of the institution and had ravished her. Even the security guard of the school had sexually assaulted the victim in December 2018. Thus, from the First Information Report it is to be noted that the victim is stated to have been sexually assaulted by so many accused persons. At none of the points it appears that the victim had ever tried to communicate or disclose the acts. The delay in lodging the First Information Report in a sense that though the incident had taken place way back, and then it is stated that, it was disclosed recently to the informant, creates doubt over the entire story. Further if the statement of the grandmother in whose custody the victim should have been, would show that she had never disclosed any of those facts to the husband of the informant. This discrepancy would show as to how a concocted story has been developed by the informant herself. The applicant is in jail since so many years. Perusal of the entire charge-sheet would show that except the interested words of the informant and possibility of tutored version of the victim, there is nothing on record to connect the present applicant with the crime. Though the applicant had withdrawn his application on 18-11-2019, yet on 09-12-2019 co-accused Jayram More has been granted bail in Bail Application No.1358 of 2019 by this Court and, therefore, on the

ground of parity, the applicant deserves to be released on bail.

5. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that there is ample evidence against the present applicant. When he had filed the earlier bail application, even at that time the charge-sheet was already before the Court. The withdrawal was after the disinclination was shown by the Court and, therefore, second bail application with no change in the circumstance, would lie. The First Information Report can be lodged by anybody when that person came to know about the offence. Here the informant is in a way rector or the Principal of the institution in which the victim was taking education and also it is a residential school. The victim has disclosed the entire incident to her grandmother, and her grandmother had disclosed the said fact to the husband of the informant and, thereafter, the informant had taken the girl in confidence, then the girl opened up and disclosed all the facts. The unfortunate small child was required to undergo sexual assault by so many persons at different places and different time. We can understand the mental condition of the girl. Though the charge-sheet is filed, the applicant deserves no sympathy. The statements of the girls who were residing in the residential school

along with the victim have stated that the victim had told them about the ill acts done by the accused persons with her. Therefore, when there is ample evidence against the applicant, he deserves no sympathy.

6. At the outset, it is to be noted that this is the second application filed before this Court by the applicant under Section 439 of Code of Criminal Procedure. Earlier bail application was also filed after the charge-sheet was filed. That means, when this Court showed disinclination to the applicant to grant any relief, at that time this Court had the occasion to go through the charge-sheet. The change in the circumstance is that the co-accused has been released on bail by this Court after the withdrawal of the application filed earlier by this applicant. Therefore, definitely this application is maintainable in view of the said change in circumstance. No doubt as regards the present applicant is concerned, perusal of the First Information Report as well as the entire charge-sheet would show that the acts are different. Whether grant of parity would be made available to the present applicant or not is a different thing which would be considered at a later point of time, however release of co-accused by this Court can be termed as change in the circumstance.

7. Perusal of the First Information Report would show that the informant is a formal person in a sense that she states that on the information given by the grandmother of the victim to the husband of the informant, informant came to know about the same. The statement of the grandmother would disclose that no such fact had taken place. In fact, the said statement was not even attached to the charge-sheet when it is filed and, therefore, the explanation was sought from the Investigating Officer. By communication dated 06-03-2021, the Investigating Officer has stated that due to the inadvertence that statement remained to be attached to the charge-sheet, however it has now been attached by communication dated 06-03-2021 before the learned Special Judge. If we perused that statement, the earlier observations would come. She has only stated that in 2013 the girl had gone to stay with her maternal aunt at village Tirth. She is absolutely silent about disclosure of the incident either by victim or by the maternal aunt of the victim about any incident in 2013. Therefore, it appears that the base of the information itself is shaky.

8. We are constrained to the acts attributed to the present applicant in the First Information Report as well as in the charge-

sheet, however one more fact that is required to be considered is that the First Information Report alleges so many sexual acts against the victim by so many persons. A specific question was asked to the learned Additional Public Prosecutor as to whether only one charge-sheet could have been filed. The answer is given by oral submissions as well as by the Investigating Officer that, though the offence had taken place against the victim at different places, at different hours, at different time, by different persons, yet it is against the victim alone and only one First Information Report has been lodged, hence no separate charge-sheet has been given in respect of each of the offence allegedly disclosed in the First Information Report. It would be proper to leave this point for decision by the concerned Court whenever the point is raised before him. As regards the present application is concerned, the inquiry is limited to the extent whether bail can be granted or not. But when apparently it is seen that, allegations though contained in one First Information Report is against different accused persons, at different time or period and, therefore, there cannot be any such common intention or common factor. Whether there can be a joint trial of all the accused persons ? How the charge should be framed against the accused persons ? would then be the look out of the Trial Court, but

certainly this point will have to be considered by the Trial Court during the trial itself. This aspect also weighs in deciding the present application. Another fact which is connected to this point is that when allegations against accused Jayram More are different and they are allegedly relating to the incident in 2013, the present applicant cannot get a parity of release of said More by this Court on bail. The only fact that has been taken note of is the change in the circumstances not the parity.

9. Now as regards the role attributed to the present applicant is concerned ; the First Information Report is by such a person that who had no personal knowledge or even immediate knowledge also. She depended on the information that was supplied to her by various persons. Though the other girls have stated that the informant had disclosed to them about the alleged misdeeds or ill acts done by the accused persons to them, they cannot be said to be the eye-witnesses to the incident and, therefore, the statements of such witnesses may amount to hearsay evidence.

10. The medical report of the girl states that the opinion is reserved for some more analysis. That means, till today final certificate hasnot been issued by the concerned doctor as to whether

the victim has been subjected to sexual assault. As regards the present applicant is concerned, it is stated that he had committed rape on the girl in room No.9 in 'Aarogyadham' building. Definitely there is delay in lodging the First Information Report which is lodged on 17-01-2019. Therefore, now except the statement of the victim, nothing more is against the applicant and, therefore, he deserves to be released on bail with stringent conditions. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant i.e. accused No.2 Suyesh s/o Madhavrao Joshi, in Special Case (POCSO) No.09 of 2019, pending before learned Special Judge (POCSO Act), Omerga, be released on P.R. of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty five thousand).
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) Before submission of bail papers, the applicant should give complete address of his residence with his mobile number. So also he should comply with the

requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.

6) He shall not visit Dnyanprabodhini, Harali Taluka Lohara District Osmanabad.

7) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-