

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1523 OF 2020

Rajendra s/o Zipa Pawar,
Age 36 years, Occupation Labour,
R/o Behind Vishwashanti College,
Indewadi Tq. And Dist. Jalna
(At Present the applicant is in jail)

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

VERSUS

The State of Maharashtra,
Through Police Station Taluka Jalna
Taluka and District Jalna.

...Respondent

.....
Advocate for Applicant : Mr. V. B. Kulkarni
APP for Respondent-State : Mr. N. T. Bhagat
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 15-01-2021.

ORDER :

1. Present applicant has been arrested on 02-09-2020 in connection with Crime No.481 of 2020, dated 19-08-2020, for the offence punishable under Section 354, 506 of Indian Penal Code and Section 8, 9 (n) and 12 the Protection of Children from Sexual Offences (POCSO) Act, 2012. After the investigation has been completed, charge-sheet has been filed before the learned Special Judge under the POCSO Act and case is bearing No.218 of 2020. Now the present applicant has

filed this application for bail under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. V. B. Kulkarni for applicant and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent-State.

3. In order to cut short it can be said that both of them have submitted in support of their respective contentions, especially the learned Advocate for the applicant submits that since the investigation is over and now nothing is required to be recovered, the applicant be released on bail. It is also submitted on behalf of the applicant that applicant's wife had lodged non-cognizable offence against the applicant on 09-06-2020. It shows that there was dispute between the husband and wife and now the wife intends to take revenge by putting the daughter in a position so that the applicant would remain in jail, therefore false implication cannot be ruled out. Per contra, the learned Additional Public Prosecutor submitted that when the daughter of the applicant herself is lodging report against the father then we should understand the seriousness in the matter. The behaviour of the applicant with his daughter was absolutely not proper and if he is released on bail then possibility of

such behaviour or even danger to the life of the witnesses cannot be ruled out.

4. It is to be noted that the minor daughter of the present applicant aged 13 has lodged the report stating that when she along with her mother, two brothers and the applicant went to sleep, she found at midnight that somebody was pressing her breasts and tried to move hands on her private part. When she saw that it was her father then she shouted. Her mother woke up and asked about the incident, then she narrated it to her mother, and there was abuses given by the mother to the applicant. The said incident had taken place at about 01.00 a.m. Thereafter, the present applicant gave threat to kill informant as well as her mother. It is also stated that in view of the rains and festival she could lodge the report on 19-08-2020.

5. Now the charge-sheet is filed, that means the investigation is complete, and therefore, the physical custody of the applicant is not required for the purpose of investigation. The material that is collected in the charge-sheet is required to be considered. The most serious part is that the daughter has lodged such report against her own father. It involves seriousness. The statement of the informant

has also been recorded under Section 164 of the Code of Criminal Procedure. No doubt she says that when the father returned home at that time he was drunk, but then she says that the incident had taken place at about 01.00 a.m. and before they went to sleep the effect of intoxication had turned down. Her statement is then supported by her mother under Section 161 as well as Section 164 of Code of Criminal Procedure. Even if for the sake of arguments it is taken that there was some dispute between the husband and wife, yet whether the mother would take shield of daughter and whether the daughter would level such allegations against father would be a question. Definitely taking into consideration the seriousness of the offence, the material that is collected disentitles the present applicant from releasing him on bail. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-