

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

993 BAIL APPLICATION NO.1392 OF 2021

SIDDHESH @ DADA POPAT RASKAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. G.G. Kadam, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent No.1/State

Mr. N.B. Narwade, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22th DECEMBER, 2021

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the applicant, who has been arrested in connection with Crime No.544/2021 dated 30.07.2021 registered with Parner Police Station, Dist. Ahmednagar, for the offence punishable under Section 305, 354, 354-D, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 7, 8 of the Protection of Children from Sexual Offences Act, 2012.

2 Heard Learned Advocate Mr. G.G. Kadam for the applicant, learned APP Mr. A.M. Phule for the respondent No.1/State and learned Advocate Mr. N.B. Narwade for the respondent No.2. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 At the outset, it can be seen that the investigation is complete and charge sheet has been filed, therefore, the further physical custody of the applicant is not required for the purpose of investigation. We are required to see what is the material that has been collected against the applicant.

4 The First Information Report has been lodged by the father of the victim on 30.07.2021. Victim was aged 16. The victim and her cousin sister used to go to school by walk. In April, 2021 it was told by the victim and her cousin to the informant that the present applicant and co-accused Vivek Kalokhe were harassing her on the Bus Stand. The matter was then taken up before respectable persons and understanding was given. Thereafter at about 1.30 p.m. on 27.07.2021 the victim and her cousin informed informant that when they had gone for submitting their CET form, they were harassed by the accused persons and they gave threat that the girls will have to marry them otherwise they will not allow their marriage to take place and also they will not allow them to live. The girls were given understanding but the parents could find that they were under tension. On

29.07.2021 the victim and her cousin went for study at about 11.00 a.m. and then at about 1.00 p.m. the mother of the informant disclosed that both the girls have consumed poisonous substance. They went to the room, where the girls had gone for study and they could find that froth had oozed out of their mouth and there was insecticide bottle near them. The girls were shifted to hospital, however, the victim was declared dead. Her cousin sister was given treatment and she was thereafter out of danger. Thereupon the First Information Report has been lodged.

5 From the contents of the First Information Report it can be seen that it was based on the information that was given by the victim as well as her sister. The Postmortem Report would indicate that the viscera was preserved and the opinion has been reserved. What is most important, is the statement of the cousin sister of the victim, who was of same age and appears to be the classmates and used to be together most of the time. Her statement that has been recorded on 03.08.2021 would disclose that she has no grievance to make against accused No.2 Vivek. She has no complaint to make also against applicant. Her statement would show that the present applicant used to frequently contact deceased and was proposing her for marriage. It appears that the victim was not agreeing to his proposal. In spite of that it appears that there used to be conversation between the victim and

the present applicant on WhatsApp. The summary of her statement would show that on the date of incident the victim told her that the present applicant is still insisting for marriage. The applicant had given her message but then the cousin sister says that she was not able to know what was that message but thereafter the victim decided to consume insecticide. Even after the victim had opened the insecticide bottle, this witness had tried to stop her but she found victim to be firm in consuming, and it was told by the victim to her that whatever may be the matter she would receive the anger of the family and then she consumed the insecticide. This witness thought that the family would come to know that she is on talking terms with Vivek and, therefore, she also consumed the insecticide. After consumption the victim fell down on the ground. The witness felt giddiness. It appears that family members gathered and they had given them home made stomach wash, as a result of which this witness omitted. She was not aware, as to whether the victim was omitted or not, but then they were shifted to hospital. In clear terms she says that she has no idea, as to whether the victim was harassed by the present applicant. Statements of other witnesses are on the line that what was told by the victim as well as her cousin sister to them.

6 In order to prove ingredients of Section 305 of the Indian Penal Code, there has to be active instigation. Prima facie from the statement of

the witness it appears to be missing. Though learned APP is pointing out the conversation on WhatsApp chat of the present applicant with the victim, what we could get is that they were constantly in touch with each other. Whether the alleged instigation from WhatsApp message would cover the ingredients of Section 305 of the Indian Penal Code, is required to be considered after the trial, but with this kind of evidence it is not necessary that the applicant should be allowed to linger in jail. The application deserves to be allowed with stringent conditions. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant viz. Siddhesh @ Dada Popat Raskar, who has been arrested in connection with Crime No.544/2021 dated 30.07.2021 registered with Parner Police Station, Dist. Ahmednagar, for the offence punishable under Section 305, 354, 354-D, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 7, 8 of the Protection of Children from Sexual Offences Act, 2012, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

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 If he commits any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 He shall not enter the jurisdiction of Khar Vasti, Pimpalner, Tq. Parner, Dist. Ahmednagar till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number to the Investigating Officer as well as to the Trial Court. So also he should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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