

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2954 OF 2021

SMT.DULCY STANTON MARTIN)...APPLICANT

V/s.

**1) THE STATE OF MAHARASHTRA)
2) VICTIM MASTER "X")...RESPONDENTS**

Mr.Anand Patil, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

Mr.Prashant Jadhav, Advocate for Respondent No.2.

CORAM : V. G. BISHT, J.

**RESERVED ON : 16th NOVEMBER 2021
PRONOUNCED ON : 24th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.25 of 2021 registered with Police Station Mahatma Gandhi Chowk, Sangli, for offences punishable under Sections

323, 324 read with 34 of the Indian Penal Code (IPC), under Sections 7, 8, 9(m), 10, 11(1)(2), 12 and 17 of the Protection of Children from Sexual Offences Act (POCSO Act) and under Section 75 of Juvenile Justice (Care and Protection of Children) Act.

2 The informant is minor victim. His natural mother died on 3rd November 2015. His father thereafter performed second marriage with the present applicant. Thus, present applicant is his step mother. Since the victim's father is serving at Dubai, the victim used to reside along with his grandparents along with the applicant.

3 The prosecution alleges that the applicant used to ask the victim to call her as his mother and used to beat him on that count and was also not allowing to talk with his grandparents. It is further alleged that he was not given proper food and the applicant used to allege that the victim was in habit of watching obscene films on laptop and used to assault him from time to

time. One Shahrukh who used to provide non-vegeterian food also used to say that whether he could take the victim inside the room and it is alleged that he used to force himself on the person of the victim after attempting to remove his clothes. It is further alleged that the applicant once had even applied cello tape on the private part of victim and also green chilly. On all these counts, the informant lodged the report.

4 Mr.Anand Patil, learned counsel for the applicant, submits that after reading of entire charge-sheet, provisions of POCSO Act are hardly attracted as against the present applicant. At the most, the case may be of harassment which is punishable under Section 323 and 324 of the IPC and are bailable offences. Investigation is over. There are no criminal antecedents against the applicant. Since 25th April 2021, the applicant is in custody. There is no possibility of trial being concluded in the near future and therefore, the applicant deserves to be released on bail.

5 Smt.Anamika Malhotra, learned APP, on the other hand, opposed the submissions by contending that there are statements of eye witnesses in respect of ill-treatment and there are all the necessary ingredients of provisions of POCSO Act. The learned APP also invited my attention to statements of witnesses in order to substantiate her submissions and then argued that the application being devoid of merits, is liable to be rejected.

6 Mr.Prashant Jadhav, learned counsel for respondent no.2- victim, supports the submissions of the learned APP. He has also invited my attention to statements of certain witnesses and according to her, having regard to the nature of accusation, the applicant does not deserve to be enlarged on bail.

7 Perused the First Information Report (FIR) and the investigation papers. As far as harassment to the victim at the hands of applicant is concerned, that is elaborately averred in the FIR. It is also alleged in the FIR that on one occasion the applicant had removed clothes of victim and had made him to

stand in the balcony. It is also clear from the FIR that the applicant had applied cello tape and as also green chilly on private part of the victim after suspecting that the victim used to see obscene pictures on laptop.

8 I have also gone through the statement of witnesses including supplementary statement of the victim which was recorded on 13th April 2021. Almost all the allegations, as made in the FIR, have been repeated. Then there is statement of one Ravindra Tatoba Patil, watchman, who also has stated about harassment given to the victim by the applicant, namely, keeping the victim naked in the balcony, not giving him food and subjecting him to beating. Then there are statements of Louiza Philip Martin and Philip Jackson Martin – grandparents of the victim. They have also repeated the same allegations as made in the FIR. Suffice to say, the witnesses have given their respective statements more or less in consonance with the contents of the FIR.

9 However, having regard to the nature of accusations and the fact that investigation is over and charge-sheet has been filed, in my considered opinion, no purpose would be served by keeping the applicant behind the bars. There are no criminal antecedents. Apart from this, it has also been argued before me that the rest of the accused have already been enlarged on bail, a fact which has not been disputed by the prosecution. For the aforesaid reasons, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) The application is allowed.

- (ii) Applicant – Smt.Dulcy Stanton Martin shall be released on bail in Crime No.25 of 2021 registered with Police Station Mahatma Gandhi Chowk, Sangli, on her executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (iii) The applicant shall not tamper with prosecution evidence.

- (iv) The applicant shall not directly or indirectly make any attempt to contact, influence, threaten or coerce the complainant or any other prosecution witnesses and shall not indulge in any similar act while on bail.
- (v) The applicant shall not indulge in similar kind of activities.
- (vi) In the event of breach of any of the conditions, the bail is liable to be cancelled.
- (vii) The applicant shall attend the proceedings regularly before the trial Court.
- (viii) Bail before the trial Court.
- (ix) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

- (x) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (xi) The application stands disposed off accordingly.

(V. G. BISHT, J.)