

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 519 OF 2021

Madhav Govind More

.....Applicant

V/s.

The State of Maharashtra
and anr.

....Respondents

* * * *

Mr. Anil Shitole, Advocate for the Applicant.

Mr. K.V. Saste, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 8th April, 2021.

P.C. :

1. Heard Mr. Shitole, learned Counsel for the applicant and Mr. Saste, learned APP for State.

2. Applicant seeks his enlargement on bail in connection with Crime No. 2167/2020 registered with Yerwada Police Station, Pune for the offences punishable

under Section 376 of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act” for short).

3. Victim’s mother is the complainant. On 12th October, 2020 she had been to Yerwada Police Station with victim to lodge the complaint. She reported, on 11th October 2010, unknown person lured her away on motorcycle, offering money. Her daughter returned home at around 8:00 p.m. When she enquired, victim told her that, a unknown person sexually exploited her at Village-Vadgaon Sheri behind the bushes. After reporting the incident, the crime was registered against an unknown person. Whereafter victim was referred to for medical examination. Victim was examined by the Medical Officer to whom, she narrated the incident of sexual assault. Her narration to the Medical Officer reads, that one unknown person sexually abused her in a Flat at Vadgaon Sheri,

whereafter he paid her Rs.500/-. On 14th October, 2020 victim disclosed the names of two persons who had sexually exploited her. Applicant is one of them. Her statement suggests, she volunteered to accompany, accused-Mahesh (accused no.1) at his shop at Village-Vadgaon Sheri. Also appears before the alleged incident, victim and Mahesh met frequently. Her narration suggests, soon after the first incident of meeting Mahesh at his shop, the victim once again accompanied Mahesh and both went to his shop at Village-Vadgaon Sheri. Victim alleged after reaching, Mahesh left the shop. At the material time, the applicant-accused no.2 was present in the shop. She alleged, applicant sexually exploited her, whereafter Mahesh paid Rs.500/- to her. On these set of allegations, the applicant came to be apprehended and cited with accused no.2.

4. Mr. Shitole, learned Counsel for the applicant submits that, applicant has been falsely implicated; the investigation is over and the chargesheet has been filed. He submitted, the trial may not commence in the near future. He submitted that the victim had opportunity to disclose applicant's name, at the first instance to her mother and thereafter to police when the complaint was lodged on 12th October, 2020. Mr. Shitole further submits that, victim had not disclosed applicant's name even to the Medical Officer. It is therefore submitted that applicant has been falsely implicated. He further submits that, there is no evidence to connect the applicant to the subject crime, except the statement of the victim. On these grounds, he seeks applicant's bail.

5. Mr. Saste, has opposed the application and supported the order passed by the learned Sessions court.

6. I have perused the chargesheet. The evidence shows, the victim had opportunity on three occasions to disclose the name of the applicant; in first point of time to the mother; second to police when report was lodged and third, when she was examined by the Doctor. However, she disclosed the name of the applicant three days after the incident. It may be stated that, prima-facie, evidence is not definite to accept the presence of applicant at the shop where victim was sexually assaulted. Infact there is no evidence to ascertain as to how and at whose instance applicant came to the spot i.e. the shop where the victim was sexually assaulted. Investigation has not been carried out from this angle. Be that as it may, the evidence suggests, assault was not forced upon the victim. I am conscious of the fact that consent of victim is immaterial, she being a minor. However, at the material time, victim was 15 year and few months old. Yet the conduct of the victim definitely suggests that she possessed mental

capacity to actively understand the nature of circumstances and consequences of act, she suffered. Thus, in consideration of the facts and attendant circumstances, in my view, a case is made out for releasing the applicant on bail. Applicant is a 19 year old student with no criminal antecedents. The application is granted and hence the following order :

ORDER

(i) The applicant arrested in Crime No. 2167/2020 registered at Yerwada Police Station, Pune he shall be released on bail on executing P.R. bond for the sum of Rs.30,000/- (Rs.Thirty Thousand only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer as and when required and co-operate in the investigation.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The application is accordingly allowed and disposed off.

8. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)