

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

BAIL APPLICATION NO. 641 OF 2020

Vinod Bhola Kevat Applicant
V/s.
The State of Maharashtra Respondent

* * * *

Mr. Solomon John Nadar, Advocate for the applicant.

Mr. Yogesh Dabke, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Monday, 4th January, 2021.

P.C. :

1. Heard learned Counsel for the applicant and
learned APP for State.

2. Applicant, is seeking enlargement on bail in
connection with Crime No. 237/2018 with Ambernath
(East) Police Station for the offences, punishable
under Sections 363, 354 of the Indian Penal Code and

Sections 7, 8, 11(1) and 12 of the Protection of Children from Sexual Offences Act, 2002 (“POCSO Act” for short). Applicant is a 35 year old person; whereas, victim was 3 ½ year old. Complainant is victim’s mother. Alleged incident had taken place on 23.09.2018, in evening while Ganpati immersion procession was on going. When the mother could not see her daughter around the house, she started searching her with the help of her neighbour, Vijay Mahendra Koli. They saw, victim was in the company of the applicant who, allegedly subjected her to ‘sexual assault’ in terms of Section 7 of the POCSO Act. Soon thereafter, she lodged the complaint and the applicant came to be arrested.

3. I have perused the chargesheet. The punishment for, ‘sexual assault’ under Section 7 of the POCSO Act, is imprisonment not less than three years

but which may extend to five years; whereas for the offence under Section 363, it may extend to seven years and liable to fine.

4. I have perused the chargesheet. Victim's mother told police that, she was helped by one, Vijay Mahendra Koli for searching her minor daughter's whereabouts. However, the statement of Vijay Mahendra Koli recorded on 4.11.2018 i.e. nearly after two months of the incident, does not suggest that, he had accompanied victim's mother in searching victim's whereabouts. This witness, said on the date of the incident, while passing through the road, he heard cries of the girl, whereupon he found the applicant was sexually assaulting the victim. His statement suggests, he was the first person who reached the place of the incident and thereafter victim's mother, came over there and thereafter he handed over victim's custody to

her mother. Thus, *prima-facie*, the statement of victim's mother suggest, she had not witnessed the incident. As such, in the circumstances, the police ought to have recorded the statement of Vinod Mahendra Koli as a first informant or atleast ought to have recorded his statement within a reasonable period and not after two months. Without commenting on the statements of these two witnesses, it may be stated that the victim refused to submit herself to her medical examination. It is so stated by mother, in the supplementary statement. It further appears, though victim's mother statement has been recorded under Section 164 of the Criminal Procedure Code, the same has not been given to the applicant alongwith the chargesheet nor produced before me.

5. The applicant is in custody since September, 2018. He has no criminal antecedents.

When enquired, learned Counsel for the applicant informs, that till date, the 'charge' has not been framed. Be that as it may, in view of the facts and circumstances, a case is made out for releasing the applicant on bail.

5. The application is therefore granted and he is directed to be released on bail on following conditions :

ORDER

(i) The applicant arrested in Crime No. I-237/2018 registered with Shivaji Nagar Police Station, District-Thane, he shall be released on bail on executing PR bond for the sum of Rs.20,000/- (Rs. Twenty Thousand only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer twice a month i.e. 10th and 29th of each month between 11:00 to 1:00 p.m. till the

charge is framed.

(iii) The applicant shall furnish particulars of his permanent residential address and contact details to the Investigating Officer within seven days from 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.

6. The application is accordingly allowed and disposed off in aforesaid terms.

7. It is made clear that observations made hereinabove be construed as expression of opinion only

for the purpose of granting bail and the same shall not
in any way influence the trial in other proceedings.

Neeta
S.
Sawant

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signed by
Neeta S.
Sawant
Date:
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(SANDEEP K. SHINDE, J.)