

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 870 OF 2021

Pawan @ Saibu Namdev Gavte

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite i/b Mr. Sunil Kamble for the Applicant.

Mr. H.J.Dedhia, A.P.P for the Respondent No.1-State.

Mr. Sachin Gite for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th OCTOBER, 2021

P.C. :

1. At the outset, learned Counsel for the applicant seeks leave to amend to delete the name of the prosecutrix from the array of respondents by replacing it with 'X'. Leave granted. Amendment to be carried out forthwith.
2. Heard learned Counsel for the parties.
3. By this application, the applicant seeks his enlargement on bail

in connection with C.R. No. 242 of 2020 registered with the Radhanagari Police Station, Kolhapur, for the alleged offences punishable under Section 354 of the Indian Penal Code; Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

4. Perused the papers. The complainant is the mother of the survivor, aged 10 years. According to the complainant, the incident took place on 1st December, 2020 at around 12.00 noon. The complainant has alleged that her daughter, aged 10 years, came home, crying and that when she had gone to the applicant's house to see how to repair a watch, the applicant dragged her and thereafter, made her sleep on the ground, gagged her with his hand and slept on her person; and that thereafter, she rescued herself and went to her friend's house and disclosed the same to her friend, 'Y'.

5. Learned Counsel for the applicant relied on the 164 statement of the survivor, who is aged 10 years and her friend 'Y', aged 14 years, to whom, the survivor made an immediate disclosure. A perusal of the 164 statement of the survivor shows that she was playing outside the applicant's house when she asked the applicant as to what he was doing, to which, he replied that he was repairing a watch; that the applicant asked her whether

she could repair a watch, pursuant to which, she went to his house. The survivor has further stated that when she went to the applicant's house and started seeing how to repair the watch, the applicant pulled her, took her to a room, pushed her on the ground and slept on her person. She has further stated that when she was started shouting, he put his hand on her mouth, pursuant to which, she pushed him and went to her friend 'Y's house and disclosed the same to her friend. The 164 statement of the friend 'Y' shows that when she was sitting with the survivor on the date of the incident, the applicant was repairing a watch. She has stated that the survivor spoiled the watch, pursuant to which, the applicant scolded her and the survivor came running to her house and disclosed the same. According to 'Y', she asked her friend (survivor) to keep quite, pursuant to which, she went to her house. The said statement of the survivor's friend 'Y', recorded u/s 164, prima facie, is in variance with the statement of the survivor aged 10 years. Admittedly, there are no allegations under Section 376 of the Indian Penal Code *qua* the applicant. The maximum sentence that can be imposed on the applicant is five years. The applicant is in custody since 2nd December, 2020. Investigation is complete and chargesheet is filed and as such, in the facts, further detention of the applicant is not warranted.

6. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 10,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the Shahupuri Police Station, Kolhapur, on the first Saturday of every month between 10:00 a.m. to 12:00 noon until further orders, except if the date in the trial Court falls on a Saturday;

(iii) The applicant shall not enter the jurisdiction of Radhanagari Police Station, Kolhapur, except for the purpose of attending the police station, until further orders;

(iv) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) 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 allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.