

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2021.09.29
13:57:17 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1792 OF 2021**

Devendra Surajmal Sharma

....Applicant

V/s

The State of Maharashtra and Anr.

..... Respondents.

Ms. Tripti R. Shetty for the Applicant.

Ms. Rutuja Ambekar, APP for the Respondent No.1/State.

Mr. Rameshwar Totala i/b Mr. Ashwin Poojari a/w Mr. Abhishek Tiwari for the Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 27, 2021

P.C.:-

1] Applicant was arrested on 11/1/2021 in Crime No.09 of 2021 registered on 11/1/2021 for the offence punishable under Sections 376(2)(f), 376(3), 323, 506 of Indian Penal Code and Sections 5(n) and 6 of the Protection of Children from Sexual Offences Act, 2012.

2] Facts necessary for deciding this application are as under:-

3] Complainant and Applicant got married on 29/5/2004 and the

Applicant is working in some multinational company on executive post. It is the case of the prosecution that in-laws of the Applicant are residents of Ujjain and after oral differences, Complainant left the company of Applicant on 17/9/2020.

4] Honouring the call of the Applicant, the Complainant was planning her return to Airoli. On 25th/26th December, 2020 victim, the daughter of the Applicant and Complainant aged about 14 years and 6 months disclosed about sexual assault that took place on 12/7/2020. It appears that, initially, FIR was lodged with Mahila Police Station, Ujjain on 28/12/2020, resulting in registration of offence No.06/2020. Ujjain Police thereafter recorded statement of the Complainant and victim under Sections 161 and 164 of the Criminal Procedure Code and transferred the same for further investigation to the non-applicant. As a consequence, aforesaid offence came to be registered.

5] Submissions of learned Counsel for the Applicant are (a) there is matrimonial discord between the Complainant and the Applicant and Complainant is trying to use her daughter as a tool to twist arm of the

Applicant, thereby implicating him on false accusation in serious offence (b) variance in the statement of the victim girl could be noticed from the language employed in the statement recorded under Sections 161 and 164 of the Criminal Procedure Code, (c) even medical evidence/examination of victim girl does not support accusations and (d) apart from the fact that there are no criminal antecedents, investigation in the matter is complete and as such Applicant is entitled to be released on bail.

6] Mrs Ambekar, learned APP assisted by Mr. Totala, learned Counsel for the Complainant would urge that degree of variance is not required to be gone into at this stage of the proceedings. She submitted that since the incident was disclosed in Ujjain, same has prompted the Complainant to lodge a complaint. In the initial investigation carried out by the Police at Ujjain and investigation subsequent to the transfer demonstrates prima facie involvement of the Applicant in the crime. It is further claimed that burden under Section 23 of POCSO Act is not discharged and that being so, Applicant's prayer for bail is liable to be rejected.

7] Mr. Totala, learned Counsel for the Complainant would invite attention of this Court to certain monetary demand made by the Applicant.

8] Considered rival submissions.

9] It appears that Complainant initially lodged criminal complaint against the present Applicant on 17/8/2020 with Rabale Police Station, which appears to have been settled, as is reflected from the statement recorded on 16/9/2020. Subsequent thereto on 17/9/2020, Complainant alongwith victim girl left for Ujjain and on 26/12/2020 lodged a complaint based on alleged incident that took place in Mumbai on 12/7/2020.

10] Nature of allegations made in the complaint were looked into by Ujjain Police and since same disclosed cognizable offence, offence came to be registered. Medical evidence brought on record does not support the case of the prosecution. Rather such evidence cannot be inferred to be available at much later stage, particularly when delay is not explained in lodging the FIR. Apart from above, this Court cannot

be oblivious to the fact of the matrimonial discord between parties as is reflected in the statement/complaint to Mumbai Police on 17/8/2020. Already complaint-wife has initiated divorce proceedings against the Applicant at Ujjain Court.

11] In the aforesaid backdrop, in my opinion, having regard to the fact that evidence available on record since does not repose confidence in prima facie involvement of the Applicant in the crime in question, Applicant deserves to be released on regular bail.

12] There is one more aspect to the matter. In the statement recorded under Sections 161 and 164 of the complainant, improvements can be noticed.

13] In the aforesaid backdrop, case for grant of bail is made out.

14] Applicant is directed to be released on bail in C.R. No.09 of 2021 registered at Rabale Police Station for the offence punishable under Sections 376(2)(f), 376(3), 323, 506 of Indian Penal Code and Sections 5(n) and 6 of the Protection of Children from Sexual Offences

Act, 2012 upon furnishing P.R. Bond of Rs 50,000/- with one or more sureties in the like amount. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence. Any two consecutive absence of the Applicant to appear before the Special Court would result into Special Court taking out suo motu proceedings for cancellation of the bail of the Applicant. Applicant shall not directly or indirectly try to establish any contact with the victim girl or Complainant till conclusion of the trial.

(NITIN W. SAMBRE, J.)