

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

BAIL APPLICATION NO.991 OF 2020

Hanumant @ Balu Dattatray Ubale	.. Applicant
Vs.	
The State Of Maharashtra	.. Respondent

.....

Mr. D.S. Mhaispurkar, Advocate for Applicant.
Mr. A.R. Kapadnis A.P.P. for the State-Respondent.
Ms. Simantini Mohite, Advocate appointed for complainant/victim.

.....

CORAM : PRAKASH D. NAIK, J.
DATE : 31st MARCH, 2021

PC.

1. This is an application for bail in connection with C.R.No.I-674 of 2019 registered with Manpada Police Station, Dombivli for the offence punishable under Sections 376 (2) (F), 354, 323, 504 and 506 of Indian Penal Code (for short "IPC") and Section 4, 5 (n), 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. The First Information Report (for short "FIR") was lodged on 5th November 2019. The victim girl is aged about 15 years. She is the daughter of applicant. Her mother had expired. According to the complainant the applicant had molested her and committed penetrative sexual assault. Medical examination was conducted. Statements were

recorded under Section 161 and 164 of Cr. P. C. On completing investigation, charge-sheet was filed.

3. Learned counsel for the applicant submitted that the FIR is false. The applicant has been falsely implicated at the instance of maternal aunt of the complainant. There was property dispute between applicant and maternal aunt of complainant. The victim is under influence of maternal aunt. Statement of the victim was recorded in the presence of her maternal aunt. Step-mother of the complainant had filed an affidavit referring to the property dispute. There are lapses in the investigation. There is no independent evidence. The cellphone of the victim was not seized during investigation and not forwarded for forensic examination. There are contradictions in the version of the complainant. Medical evidence does not support prosecution case.

4. Learned APP submitted that there is no reason to disbelieve the version of the victim/complainant. The defence about the property dispute is false. The dispute was over long ago. Medical evidence supports the prosecution case. The supplementary statement is fortified by statement recorded under Section 164 of Cr.P.C. The affidavit of step-mother relied upon by learned counsel for the applicant cannot be

accepted at this stage.

5. Learned Advocate representing the complainant submitted that the version of the complainant cannot be disbelieved. Medical evidence supports the version of victim. The victim is girl aged 15 years. She was subjected to sexual assault by her father. There is consistency in her version that; she was molested and sexually assaulted.

6. I have perused the documents on record. The victim is none other than daughter of the applicant. There is specific allegation about incidents of molestation and forceful sexual intercourse. The date of incidents are corrected in supplementary statement. The statement under Section 164 of Cr.P.C. is in consonance with her version in supplementary statement. The age of victim girl is 15 years. The mental trauma of the victim is required to be considered. She has no reason to falsely implicate applicant. The affidavit relied upon by the learned counsel for the applicant cannot be accepted at this stage. There is no reason to disbelieve version of the victim/complainant. The medical report also supports the prosecution case. Only on account of presence of maternal aunt of victim her version cannot be discarded. The statement

under Section 164 Cr.P.C. was recorded before learned magistrate. In these circumstances, no case for grant of bail is made out. The assistance rendered by learned appointed advocate representing victim is appreciated.

ORDER

- (i) Criminal Bail Application No.991 of 2020 is rejected.
- (ii) The Legal Aid Service Committee, High Court shall pay the professional fees to the appointed advocate as per rules.
- (iii) Application is disposed of.

(PRAKASH D. NAIK, J.)