

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

CRIMINAL BAIL APPLICATION NO. 2187 OF 2021

Omprakash Dilip Jarande

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. M. S. Mohite, Senior Advocate i/b Mr. Raju M. Yamgar, for the Applicant.

Ms. Anamika Malhotra, A.P.P for the Respondent No.1– State.

Ms. Ameeta Kuttikrishnan, Appointed Advocate for the Respondent No.2.

PSI - Nandkumar Ganpat Lonkar, Saswad Police Station, Pune (Rural), is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 21st SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant aged 19 years (at the relevant time), seeks his enlargement on bail in connection with C.R. No. 92 of 2020 registered with the Saswad Police Station, Pune (Rural), for the alleged offences punishable under Sections 376(2)(f)(j), 3 of the Indian Penal Code and under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act ('POCSO' Act').

3. Learned Senior Counsel for the applicant submits that the allegations as against the applicant are false and baseless. He submits that although the prosecutrix had stated that the applicant, a distant relative, sexually assaulted her on 20th December 2019, as a result of which she became pregnant, the DNA report is to the contrary i.e. the applicant is not the father of the child. He submits that there is a civil dispute pending between the applicant's father and the prosecutrix's father. He submits that in the written statement cum counter claim, the prosecutrix's father has alleged that the applicant's father had brought into existence memorandum of partition by fraud and had prayed to declare the same as void and had sought cancellation of the same. Learned Senior Counsel for the applicant submits that because of the said civil dispute, the applicant has been falsely implicated by the prosecutrix, at the instance of her father.

4. Learned APP as well as the learned appointed advocate, for the respondent No.2 oppose the application.

5. Perused the papers. It appears that the applicant, aged 19 years (at the relevant time) and the prosecutrix, aged about 15 ½ years are distant relatives. It is alleged by the prosecutrix that on 20th December 2019, the applicant had sexually assaulted her when she had gone out to dump

garbage. She has stated that because of the said sexual assault, she became pregnant and when her parents noticed her pregnancy, a police complaint was lodged by her mother, as against the applicant. It appears that the prosecutrix had undergone abortion, pursuant to which the foetus was sent for examination. The DNA report excludes the possibility of the applicant being the biological father. The applicant is in custody since 4th March 2020. Investigation is complete and charge-sheet is filed.

6. Considering the peculiar facts of the case, further detention of the applicant is not warranted. 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. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the Satara Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the framing of charge;

- (iii) The applicant shall not enter the jurisdiction of Saswad Police Station, Pune, until further orders;
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from 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;
- (vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;
- (viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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.