

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

CRIMINAL BAIL APPLICATION NO.1079 OF 2020

Pravin Yashwant Wadkar

.. Applicant

Vs.

The State Of Maharashtra

.. Respondent

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Mr. Umesh Pawar, Advocate for Applicant.

Mr. Rohan P. Surve, Advocate for the complainant.

Mr. Y. M. Nakhwa, A.P.P. for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th FEBRUARY, 2021

PC.

1. The applicant is seeking bail in connection with C.R. No.314 of 2020 registered with D.N. Nagar Police Station, Mumbai for the offences punishable under Section 376 of Indian Penal Code (for short "IPC") and Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences (for short "POCSO") Act, 2012. The First Information Report (for short "FIR") was lodged on 07th July 2020. The applicant was arrested on 16th July 2020.

2 The FIR was registered at the instance of father of victim. It is alleged that the complainant is working in film industry and frequently visits the V-Om Studio situated at Motilal Nagar, Goregaon

(W.) for dubbing. He was acquainted with Dubbing Artist Pravin Wadkar (applicant). Both of them have worked together on several occasions and hence they became friends. The applicant was frequently visiting him and thus the complainant had trust upon him. The daughter of the complainant (victim) is interested in dance and acting. She has also acted as the dubbing artist for child characters. The applicant had told complainant that dubbing of Hindi serial "Tarak Mehta Ka Ulta Chashma" in Marathi would be conducted at V-Om Studio Motilal Nagar Goregaon (W.). The applicant was conducting dubbing of Hindi serial in Marathi. The applicant was aware that complainant's daughter was interested in dubbing. The applicant had told the complainant to send his daughter in December 2019 for dubbing of Hindi serial in Marathi. The complainant told him that his daughter do not know Marathi. The applicant told him that he would teach her Marathi. Hence, from December 2019 the victim girl was sent to the applicant for dubbing of Hindi serial in Marathi. Since the applicant was like a family member, daughter of complainant/victim was sent with him. The victim used to attend dubbing twice a month. She attended dubbing in December 2019, January 2020 and February 2020. In March 2020 lockdown was

declared on account of pandemic and dubbing work was stopped. The daughter of complainant/victim was attending dance class with her neighbour Priya who became her friend. She was visiting house of complainant. On 06th July 2020 at about 08:30 p.m. the victim told the complainant that while the victim was visiting V-Om Studio for learning dubbing of Hindi serial "Tarak Mehta Ka Ulta Chashma", the applicant told her that he would show his house to her and took her to his house in December 2019 at Avez Heights at Andheri. At that time, no one was in the house. The applicant had forceful sexual intercourse with her and threatened her not to disclose the incident to anyone. Whenever the date was fixed for dubbing, the applicant used to take the victim with him and she was taken to his house and subjected to sexual assault and then taken for dubbing. The complainant questioned her, why she did not disclose the incident to him. She told him that she had gone out with her friend Priya on 05th July 2020. At that time, her friend took her in confidence and asked reason for her disturbed state of mind and hence victim told her about the incidents. Priya advised her to disclose the same to complainant. The complainant immediately went to police station.

3. During the course of the investigation, statements of witnesses were recorded. The statement of victim girl was recorded under Sections 161 and 164 of Code of Criminal Procedure. She was medically examined. On completing investigation, charge-sheet was filed.

4. The applicant preferred an application for bail before the Sessions Court. The said application was rejected vide order dated 6th February 2021.

5. By order dated 14th January 2021 it was directed that in accordance with Section 439 (1-A) of Code of Criminal Procedure intimation about hearing of the application be given to the complainant/victim. Learned APP produced letter dated 22nd January 2021 issued by police station to mother of victim intimating about hearing of application on 29th January 2021. The application was heard on 29th January 2021 and 05th February 2021. The complainant was present in the Court along with the victim. He was heard on 5th February 2021. The application was adjourned to 09th February 2021. Learned APP submitted that it would be appropriate that complainant is

represented by Advocate. Hence, by order dated 9th February 2021 High Court Legal Aid Committee was directed to appoint advocate to represent complainant. The Legal Aid Committee appointed advocate to represent complainant in pursuant to aforesaid order. Learned appointed advocate appeared on 22nd February 2021. He submitted that intimation about his appointment is given to the complainant and he had taken instructions from him to oppose this application. The complainant was also informed that the application is listed on 22nd February 2021. Both sides were heard on 22nd February 2021. Application was posted for passing order.

6. Mr. Pawar, learned Advocate for the applicant submitted as follows:

- (i) The entire case is false. The applicant has been falsely implicated at the instance of complainant. The applicant has not committed the alleged act.
- (ii) There is delay in lodging FIR. The alleged incidents had occurred from December 2019 to February 2020. However, the complaint was lodged on 7th July 2020. There is no explanation for delay.

- (iii) The relations between applicant and complainant and victim were cordial which is borne out by photographs annexed to application. The applicant and his sister had directed Marathi Movie named as 'Preet Adhuri' wherein the applicant had played lead role of Hero. The shooting of the said movie was completed and it was ready for release. Poster of the film was ready in the last week of June and the applicant had shown the poster to his friends, relatives and other persons including victim and complainant. The complainant is a dubbing artist but he tried to pretend that he is director of film. He has not directed any film. He forced the applicant to show his name as a director on the films poster to boost his career. The applicant refused to do so. There were clashes between the complainant and the applicant. At this point of time, the relation was spoiled. He had grudge against the applicant and was instrumental in lodging the false complaint with the help of his daughter. There is strong motive to falsely implicate the applicant.
- (iv) The victim girl on receipt of poster of film through whatsapp had congratulated applicant on 29th June 2020. The applicant has annexed screenshot of poster of film and congratulatory message

received from victim. The victim girl had made whatsapp calls to the applicant. The applicant is relying upon the screen shot of the calls made by the victim. It is submitted that the dates are reflected on the screen shots which are after the alleged incident of sexual assault. The calls are for a period from February, March, April, May and June. It is submitted that the complainant and the victim have not given specific date of the incident which indicates that the FIR has been concocted.

- (v) There is no independent evidence to show that the applicant has at any point of time taken the victim to his residence at Andheri. There is no evidence of any CCTV Footage to establish the presence of the victim and the applicant together in the residential building of the applicant. There are no statements of independent witnesses from the building where the applicant resides to corroborate the fact that the victim was at any point of time seen in the company of the applicant in his residential building. There are no statements of any witnesses from the place of work to establish that the victim and the complainant had visited together for the purpose of dubbing.

(vi) Although, it is the case of the complainant that the victim was disturbed which was noticed by her friend, the family members of victim did not notice disturbed state of mind of victim at any point of time after March 2020 till she disclosed the incident to complainant. This shows that the allegations are concocted to implicate the applicant in the crime.

(vii) Statement of victim girl recorded under Section 161 and 164 of Cr.P.C. are vague. She has not specified the date of the incident.

(viii) The medical evidence does not support the case of the prosecution.

The final opinion about the sexual assault has not been given by the Medical Officer. There were no injuries of whatsoever nature on the body of victim. If the victim aged about 13 years was sexually assaulted whenever she was taken to applicant's residence, there would be some injury on her private part. However, the medical examination report indicate that no injury of whatsoever nature fresh or old is visible on the person of the victim. The victim had given false version at the instance of her father.

7. Learned APP submitted that the victim is minor girl aged about 13 years. There is age gap between victim and accused. There is

no reason for complainant and victim to falsely implicate applicant. In the statement of victim under Section 161 and 164 of Cr.P.C, she has attributed overt act amounting to offence to applicant. The submissions of the learned counsel for the applicant cannot be accepted at this stage. The victim was subjected to sexual assault from December 2019 to February 2020. Since the victim was examined after FIR was lodged, there may not be injuries on her person. Learned APP tendered statements of the victim under Sections 161 and 164 of Cr.P.C. The statement of Dr. Vijaya was recorded on 23rd January 2021. She is family Doctor of the complainant's family. She has stated that on 31st March 2020 the victim had visited her for treatment along with her mother. She was suffering from fever and body pain. On 21st July 2020, the victim had visited her clinic. She noticed some boils on her private part. There was swelling and reddishness. She was advised to take antibiotics. On 10th September 2020, the victim was again brought for treatment. On 23rd January 2021, the victim and her mother visited her clinic with police and showed her the copy of FIR. The police made inquiry with her regarding treatment given to victim on 21st December 2020 and she had stated that when the victim was examined, she had noticed reddishness

and boils on her private part. She further stated that when the victim and the complainant had visited her, they did not inform her about the offence and she does not have any information in that regard. She also handed over the prescription about treatment given to the victim. It is submitted that this statement has been recorded after filing of charge-sheet and it would be included in charge-sheet.

8. Learned advocate for intervenor submitted that the victim was a minor girl. She was under trauma. Her friend after realizing that the victim was disturbed gave confidence to her to inform about the incident to her father. The incident had occurred between December 2019 to February 2020. The applicant took the victim for dubbing. She was sexually assaulted. The victim was under mental trauma and could not explain her suffering to family. The contradiction, if any, as contended by the counsel for the applicant can be considered during the trial. The incidents were old and hence the subsequent medical examination may not refer to injury on the person of the victim. The provision of Section 376 of IPC and Section 4, 6, 8 and 12 of the POCSO Act are attracted in this case. The victim used to call accused Bhaiyya.

The version of the victim cannot be doubted. The complainant has given letter to Deputy Commissioner of Police on 24th February 2021 for changing the investigating officer and to reinvestigate the case.

9. I have perused the documents on record. The FIR is lodged by father of the victim on 6th July 2020. According to complainant, the victim girl was interested in dubbing. In December 2019 onwards, victim was sent to applicant for dubbing of Hindi serial in Marathi. She used to attend dubbing twice a month. She attended dubbing in December 2019, January 2020 and February 2020. In March 2020 lockdown was declared and the dubbing work was stopped. Thus, the victim has approximately joined dubbing about six times during the period of three months. According to the complainant on 6th July 2020 the victim informed him that the accused took her to his house in December 2019. She was threatened and subjected to penetrative sexual assault. Whenever victim had joined for dubbing, the accused used to take her to his residence first and after sexual assault, she was taken on dubbing set. Thus, as alleged by the complainant, the incidents had occurred during the period from December 2019 to February 2020. Statements of victim were recorded under Section 161 and 164 of Cr.P.C.,

on 7th July 2020 and 15th January 2021. In the statement dated 7th July 2020 she stated that she was told to do dubbing work with accused by her father. She further stated that for the first time when she went for dubbing, she was picked up by the accused in his car and she was taken to his house. The accused touched her inappropriately and committed sexual intercourse. She was threatened. Thereafter, she was taken to V-Om Studio for dubbing. She was again dropped home by him. At that time once again accused threatened her. Thus, on the first day of dubbing the accused took victim to his house and committed alleged act. In this statement, the victim has not mentioned the date of incident. The accused had allegedly picked her from his residence on four other occasions in his car and before going to Goregaon she was taken to his residence and subjected to sexual assault. Last time she was picked up by him was in February 2020. Specific date of subsequent four occasions were not mentioned. On 5th July 2020, she disclosed the incident to her friend. She was advised by her friend to inform about it to her father. Hence on 5th July 2020 she disclosed the incident to her father. In the statement dated 15th January 2021, the victim had stated that her father has lodged complaint against his friend (applicant). She likes dubbing

work. Her father had told her to join applicant to learn dubbing and perform the same. For the first time when she was supposed to attend dubbing, applicant took her in his car to his house. She was subjected to sexual assault. Thereafter she was taken to dubbing studio. In the evening, she was dropped home. She was threatened. Date of incident is not mentioned. Thereafter, about 4 to 5 times the accused took her for dubbing and before going to studio, he took her to his residence and sexually assaulted her. The last time she accompanied accused was in February 2020. The dates on which four to five times she was taken to applicant's house has not been mentioned in the statement.

10. The applicant has attributed motive to the complainant for lodging false complaint. According to applicant, the complainant was insisting to mention his name as director in film produced by applicant. The applicant has also contended that even after the incident, there are whatsapp calls by the victim to the complainant. The calls were made according to him in April, May and June 2020. These factors shows that no such incidents had occurred. It is also contended that the victim had congratulated the applicant for release of poster of his film on 29th June 2020. It is also contended that relationship between the applicant,

complainant and the victim was cordial until the complainant had quarreled on account of displaying his name as Director on the poster of the film released by the applicant. Leaned APP has relied upon the statement of the family Doctor Joshi who had allegedly examined the victim. The statement was recorded after filing the charge-sheet on 23rd January 2021. This witness has stated that victim had visited her with mother on 31st March 2020 complaining body pain and fever. Thus, the victim had consulted Doctor Joshi even after the alleged incidents. There was no complain related to sexual assault. On 21st July 2020, they again visited Dr. Joshi and on examining she found swelling, boils and reddishness on her private part. She was prescribed medicine. This examination is allegedly after five months from last incident. On 10th September 2020, the victim again visited with mother as she was suffering from fever. Dr. Joshi, however, stated that victim and other mother did not disclose to her about the complaint lodged with D.N. Nagar police station about sexual assault upon victim. The visit of victim and her mother to doctor Joshi on 31st March 2020 is after last incident and their visit on 21st July 2020 is after registration of FIR. Dr. Joshi has not stated that the swelling, reddishness or boils referred by her has any

connection with sexual assault. Dr. Joshi had noticed it on 21st July 2020. The victim was examined by Medical Officer after registration of FIR on 7th July 2020. There is no reference to any signs as stated by Dr. Joshi.

11. The victim was medically examined. The history provided to the Doctor by victim at the time of her medical examination is that she was sexually assaulted and sexual intercourse took place between November 2019 (first Episode) till February 2020. In FIR, it is alleged that first incident is of December 2019. The history also indicates that there was no violence during this period. According to the complainant the dubbing itself has started in December 2019. She had joined dubbing in December 2019, January 2020 and February 2020. The medical examination report indicates *vis-a-vis* examination of injuries of body that there was no evidence of physical violence. Local examination of genital part/other orifices external genitalia mentioned that there is no evidence of fresh/old injuries. It was contended by Learned APP and learned counsel for intervenor that the incident had occurred in December 2019 to February 2020 and hence there was no signs of injuries. The case of the prosecution is that the victim was subjected to sexual intercourse atleast five times. The medical report indicates that

there was neither fresh nor old injuries. The final opinion column in the medical examination report is Nil. Except statement of victim, there is no evidence on record to show that at any point of time, applicant had visited his residence along with the victim. There is also no evidence to show that the victim and the applicant at any point of time visited the studio together. The complainant has not stated that the accused used to pick her from his residence on the date of dubbing and drop her in the evening in his car. The case of the complainant and the victim is that friend of the victim had noticed her disturbed state of mind and inquired with her the cause of disturbance and at that time the victim had disclosed her incident and on her advice, she had narrated the incident to her father. Although, the victim was attending dance class with said friend, for first time she disclosed the incident to her on 5th July 2020. From February 2020, till 5th July 2020, the incident was not disclosed to anyone. The complainant and his mother apparently did not notice the disturbed state of mind of the victim. According to Priya, friend of victim, she was called by complainant on 6th July 2020 after the victim had disclosed the incident to him. The complainant in the FIR has not stated that he had any discussion with Priya (friend of the victim). Her

statement was recorded on 8th July 2020. Her statement was also recorded under Section 164 of Cr.P.C. I am conscious of the fact that the victim is minor. This is not the stage to give any finding. However, from these circumstances as stated above if the prosecution case is found debatable, the applicant need not be incarcerated in custody for further period. Investigation is completed and charge-sheet is filed. Hence following order:-

ORDER

- (i) Criminal Bail Application No. 1079 of 2020 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.314 of 2020 registered with D.N. Nagar Police Station, Mumbai, on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11.00 a.m. to 01.00 p.m. till further orders;
- (iv) The applicant shall not tamper with the evidence and shall not approach the victim in any manner;
- (v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)