

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2617 OF 2021

AMAR RAJU KUSALKAR

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Kedar Patil i/b. Mr.Amit A. Patil, Advocate for the Applicant.

Smt.Anamika Malhotra, APP for the Respondent – State.

Ms.Devyani Kulkarni, Advocate for the Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 23rd NOVEMBER 2021
PRONOUNCED ON : 6th DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.84 of 2021 registered with Police Station Shahupuri, Satara, for offences punishable under Section 376(2)(N) of the

AVK

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Indian Penal Code (IPC) and under Section 4 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act).

2 The applicant is the neighbour of informant. At the relevant time, he was 20 years old while the victim – daughter of the informant, was a student of Class 9 and 15 years old. On 24th February 2021, the victim instead of going to school, accompanied the applicant to the house of his aunt. The informant then along with her foster brother went to the house of aunt of applicant and knocked the door. The victim opened the door and from there she was brought back to the house. According to the prosecution, when the informant enquired with the victim, she revealed that four months ago the applicant had called her in his house and despite her resistance, had sexually assaulted her. Even on 24th February 2021, she was again called by the applicant at his aunt's house and again, against her will, assaulted her sexually. The informant, accordingly, lodged the report.

3 Mr.Kedar Patil, learned counsel for the applicant, submits that while accompanying the applicant to his aunt's house, the victim had informed her sister and this is clear from the First Information Report (FIR). Although it is alleged in the FIR that she was forcibly raped, but her own statement recorded by the Investigating Officer does not show that she was sexually assaulted forcibly. Even during the medical examination, she did not give the history of sexual abuse and rather stated that she has been in relationship with the applicant. For all these reasons, the applicant deserves to be released on bail, argued learned counsel.

4 Smt.Anamika Malhotra, learned APP, submits that the victim at the relevant time was a minor and her minority should be taken into consideration while deciding the application. The learned APP also invited my attention to the statements of prosecution witnesses, namely, Kumari Vinita Vinod Jiman – sister of victim and also that of Sarubai Baban Kirdat. Having regard to the nature of accusation, the application does not deserve consideration, argued learned APP.

5 The learned counsel for respondent no.2 has also supported the submissions of learned APP and would support the trial court's order rejecting the bail application.

6 It is pertinent to note from the FIR that the earlier incident of sexual assault had taken place four months ago from the date of lodging of report but despite that, the victim did not disclose that incident to her mother. It is also not the case of prosecution that the victim was under any threat or any kind of duress and that is why she could not reveal the earlier incident.

7 The second incident took place on 24th February 2021 and according to the FIR, the victim was again called at the house of aunt of applicant where again she was ravished against her will. However, the statement of victim recorded by the Investigating Officer depicts different story. Her statement shows that on 24th February 2021, while she was proceeding to her school, she saw the vehicle of applicant and therefore she accompanied him to the house of applicant's aunt. Her statement

further shows that there they had a quarrel and thereafter despite her resistance, the applicant removed her clothes and assaulted her sexually. However, again the medical history given by her is quite interesting. She gave the following history :

“She met the assailant 4 months back and claims to be in a relationship with him. She is not telling any history clearly and only maintaining that they have had physical relations twice and both times at assailant’s home. After asking her multiple times about how they met and whether he forced her, she did not give any relevant history.”

8 From the above, two things are clear. Despite having been ravished four months ago, she still ventured to accompany the applicant to his aunt’s house where they again had physical relation. Even this fact was told by the victim to her younger sister, namely, Kumari Vinita Vinod Jiman and this is clear not only from the FIR but also from the statement of Kumari Vinita Vinod Jiman i.e. sister of the victim. The conduct of victim goes to show her level of understanding and maturity.

9 The statement of victim's sister, namely, Vinita Vinod Jiman is in question and answer form which shows that after reaching the house, the victim revealed that despite her resistance, the applicant assaulted her sexually. But, as already noted from the medical history, it does not appear to be so. Moreover, it appears that while recording the statement of victim, suggestive questions were put to her having answers in those questions.

10 I have also gone through the statement of Sarubai Baban Kirdat which is in the nature of hearsay and therefore, does not help the case of prosecution.

11 Having regard to the material on record, in my considered opinion, no useful purpose would be served by keeping the applicant behind the bars. Moreover, no criminal antecedents are forthcoming. In such circumstances, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Amar Raju Kusalkar shall be released on bail in Crime No.84 of 2021 registered with Police Station Shahupuri, Satara, on his executing P.R.Bond in the sum of Rs.20,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)