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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2825 OF 2021

Sanket @ Banti s/o Sanjay Kalewad ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Sudarshan J. Salunke h/f Prabhanjan Gujar, for the Applicant.

Mr. A. A. Palkar, APP, for the State-Respondent.

Ms. Devyani Kulkarni, Legal-aid, for Respondent No.2.

CORAM : V. G. BISHT, J.

RESERVED ON : 18th November, 2021.

PRONOUNCED ON : 29th November, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No.949 of 2020 registered with Vijapur Naka Police Station, Solapur City, District-Solapur for the offences punishable under Sections 363, 376, 387, 354-C, 323, 504, 506 r/w 34 of the Indian Penal Code ('IPC' for short) and Section 3(a) r/w 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short) and Section 67, 67-B of the Information Technology Act, 2000 ('IT Act' for short).

2 It is the case of prosecution that informant, who is police personnel and attached to Vijapur Naka, Solapur City, is mother of victim. The victim at the relevant time was studying in 9th Standard and was 15 years old. On 29/09/2020 the victim left the house on the pretext of attending the birthday party of her friend but did not return, therefore, the informant-mother lodged the report on the basis of which offence punishable under Section 363 of the Indian Penal Code came to be registered vide FIR No. 949 of 2020 dated 29/09/2020 with Police Station Vijapur Naka, Solapur City, District-Solapur.

3 It then appears that on 30/09/2020 victim returned and informed how she came in contact with applicant and fell in love with him. Even semi-nude photos on the request of applicant were sent by her and the applicant took disadvantage of the same and threatened to transmit it to her mother. On that ground, it is alleged, applicant asked her to come to Nanded. On 29/09/2020 the victim then went to Nanded via Latur. From there she was taken to Raj Bar/Hotel. The prosecution further alleges that at about 11-30 p.m. the applicant forcibly committed sexual intercourse twice in the same night. It is further alleged that even the applicant asked her whether she had brought Rs.1 lakh and when she replied in negative he slapped thrice. He then checked victim's bag and

removed gold chain and gold ring. On the next date i.e. on 30/09/2020 the applicant persuaded her to return to house and dropped her at Nanded ST Bus Stand. On the basis of said supplementary statement of informant which was recorded on the very next day of the lodging of the report Sections 376, 387, 354-C, 323, 504, 506 r/w 34 of the IPC and Section 3(a) r/w 4, 8, 12 of the POCSO Act came to be added with Sections 67, 67-B of the IT Act.

4 Mr. Salunke, learned Counsel for the applicant, submits that no recovery has been effected from the applicant although he was in police custody. According to learned Counsel, informant being in police department the alleged offence is blown out of proportion and has been presented in an aggravated form. According to learned Counsel, the conduct of the victim speaks in volume inasmuch as she was neither kidnapped nor blackmailed as alleged. She on her own went from Solapur to Nanded via Latur and stayed with applicant. The investigation is completed. Charge-sheet has been filed. Trial will take its own time and there is no possibility of conclusion of trial in near future. For all these reasons, the applicant deserves to be enlarged on bail.

5 Mr. Palkar, learned APP, on the other hand, opposed the submissions by contending that everything has been accounted in minute delay in the FIR. Similarly, there is statement of victim recorded under Section 164 of the Code of Criminal Procedure which is in consonance with the contents of FIR. Medical evidence also supports that the victim was sexually assaulted. Having regard to the age of victim, no leniency should be shown and application is liable to be rejected.

6 Ms. Kulkarni, learned Counsel for victim, also supports the submissions advanced by the learned APP. The learned Counsel further submits that the offence is of gruesome nature. There are antecedents and for all these reasons the application is liable to be rejected.

7 Perused the FIR and investigation papers. It is clear from the record that it was the applicant, who developed the relationship with the victim on the pretext that he was friend of one of her friend and gradually gained her confidence. I have also gone through the statement of the victim recorded under Section 164 of Cr.PC. by Additional Chief Judicial Magistrate, Solapur which clearly shows that after gaining the confidence of victim the applicant solicited half naked

photographs of victim and after emotionally blackmailing, he was able to secure the photograph. It is from then afterwards he started blackmailing the victim and made her to come to Nanded so as to meet him. From there he took her to hotel where he against the will of victim ravished her twice and later on dropped her at Nanded bus stand and even asked her not to reveal anything about their relationship.

8 There is medical certificate produced on record which also shows that hymen injury was present and in the opinion of the concerned Medical Officer the evidence of sexual intercourse/assault could not be ruled out.

9 It is also to be noted that even the applicant had removed gold chain and ring from the bag of the victim.

10 Lastly, aspect of antecedents. While seeking the remand of the applicant before the learned trial Court, the investigation officer mentioned that the applicant is also involved in C.R. No. 509 of 2018 for the offence under Sections 354, 354-A, 354-B, 354-D, 506 r/w 34 of IPC and Section 12 and 17 of POCSO Act. He was also shown to be involved in Crime No. 65 of 2020 for the offence under Sections 324, 323, 504

r/w 34 of the IPC.

11 Having regard to the material on record, it is clear that the victim was minor on the date of incident, a fact which is not disputed by the learned Counsel for the applicant. There is prima-facie material to point out the involvement of accused in the offences.

12 Keeping in mind the seriousness of the offence and as also the similar antecedents, in my considered opinion, the applicant does not deserve to be released on bail. Hence, the following order.

ORDER

- 1. Application is rejected.**
- 2. The learned trial Court is, however, directed to expedite the trial.**

(V. G. BISHT, J.)