

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1292 OF 2020

Babuali Abdul Hakim Ansari	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Ms. Sana Shaikh a/w. Maaya Updesha, Hemal Shah, Pratik Thadani and Kainat Rakhanghi i/b. M/s. A. A. Siddiquie & Associates for Applicant.
Ms. A. A. Takalkar, APP for Respondent-State.

CORAM : NITIN W. SAMBRE, J.
DATE : NOVEMBER 30, 2021

P.C. :

Heard.

2. The applicant is seeking regular bail in Crime No.325 of 2020 registered with Mankhurd Police Station for offences punishable under Sections 376, 376(3), 376(D)(A), 354, 354(A), 363 and 506 of the Indian Penal Code read with Sections 6, 10 and 12 of the POCSO Act. The applicant was arrested on August 8, 2020 and already charge-sheeted. The offence came to be registered on August 10, 2020, pursuant to an incident dated July 29, 2020 in which the complainant shown to be the mother of the victim.

3. Another offence being Crime No.411 of 2020 punishable under Sections 376, 376(3), 354(A), 354(D) and 341 IPC read with Sections 4, 8 and 12 of the POCSO Act came to be registered against one Dawood Surve, who was arrested on July 31, 2020. In the said offence, the complaint is based on the incident - the alleged sexual assault dated July 29, 2020. The accused in the said offence i.e., Crime No.411 of 2020 is before this Court in Bail Application No.326 of 2021 wherein this Court had issued notice to the complainant. The complainant therein is victim's aunt.

4. As far as the present case is concerned, the alleged incident is claimed to have occurred on the very same day i.e., July 29, 2020 that too at around 8:30 p.m.

5. Based on the aforesaid background, submissions of Counsel for the applicant are the applicant is falsely implicated as is apparent from the aforesaid material. It is also claimed that the victim is used as a tool by her family members so as to draw compensation provided as per the Government policy to the victims in sexually assaulted cases. It is also urged that the case of the prosecution is not supported by the medical evidence.

6. Learned APP would urge that the investigation supports the case of the prosecution as the statement of the shop owners and C.C.T.V. footage seized in the matter justify the claim that the victim was in the company of the applicant.

7. In the aforesaid background, if one considers the overlapping allegation of the incidents of the very same date, in both these crimes referred to above, the victim appears to be the same, whereas the complainant in the present case is her mother and in Crime No.411 of 2020, her aunt is shown to be the complainant.

8. Though it is mentioned that the incident has occurred on July 29, 2020, however, the timings of such incidents are claimed to have been different and it is difficult to believe that on the same date, the applicant could have travelled from her parental place to the place of her aunt where the offence is claimed to have been committed.

9. Without going into the issue of appreciation of other evidence in the matter, the material evidence particularly the conclusion does not support the case of the prosecution as claimed. That being so, a case for

grant of bail is made out.

10. Hence, applicant is directed to be released on bail in Crime No.325 of 2020 registered with Mankhurd Police Station for offences punishable under Sections 376, 376(3), 376(D)(A), 354, 354(A), 363 and 506 of the Indian Penal Code read with Sections 6, 10 and 12 of the POCSO Act on executing P.R. Bond in the sum of Rs.10,000/- with one or more sureties in the like amount. Applicant shall neither directly or indirectly try to influence the prosecution witnesses nor tamper with the evidence. Applicant shall also not try to directly or indirectly contact the victim or her family members till conclusion of the trial. Applicant shall remain outside the jurisdiction of the concerned Police Station where crime is made.

11. Bail Application is disposed of accordingly.

(NITIN W. SAMBRE, J.)

Minal Parab