

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

**BAIL APPLICATION NO.1725 OF 2020
WITH
INTERVENTION APPLICATION NO.441 OF 2021**

Prashant Suryakant Date	.. Applicant
<i>Versus</i>	
State of Maharashtra	.. Respondent

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Mr.Mihir Gheewala i/b. Mr.Santosh G. Pawar, Advocate for the Applicant.

Mrs.M.r. Tidke, APP for the Respondent – State.

Ms.Saziya Mukadam, Advocate for the Intervenor.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 15, 2021.

P.C. :

This is an application for bail under Section 439 of Code of Criminal Procedure, 1973 (“Cr.PC” for short) in connection with C.R. No.424 of 2020, registered with Powai Police Station, Mumbai, for the offences punishable under Sections 377, 506 of Indian Penal Code, 1860 (“IPC” for short) and Sections 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). The applicant was arrested on 21st October, 2020.

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2 The First Informant is the grand mother of the victim boy. According to complainant, victim is aged about 17 years 11 months. The relatives of the complainant are residing in the nearby area of residence of complainant. Complainant's relatives Suryakant Date and his wife Shubhangi Date were suffering from COVID-19 and they were admitted at Seven Hills Hospital. Their son Prashant (Applicant) was alone at home and hence the family of applicant had requested complainant to send victim to their house. From 20th June, 2020 to 27th June, 2020, the victim boy used to visit the house of accused in the night for sleeping. The applicant was addicted to liquor. The complainant was providing meal to him. The victim went to native place at Chiplun and hence he could not visit the house of applicant/accused. On 2nd July, 2020, the applicant abused the complainant's family on account of fact that the victim was not sent to his residence. N.C. complaint was lodged with Powai Police Station, Mumbai, by complainant against the applicant. On 3rd August, 2020, the applicant/accused abused the complainant and others for providing inferior quality meal and assaulted them. He also showed photographs of victim in half pant. N.C. complaint was lodged against the applicant on 3rd August, 2020. The complainant suspected foul play. She called the victim boy from

Chiplun. On 4th August, 2020 the victim came to Mumbai. The complainant took him in confidence and enquired with him as to what has happened. The victim told her that he was forced to drink liquor and the accused had subjected him to sexual assault. He was forced to commit oral sex and subjected to unnatural sex. The complaint was lodged with police and the First Information Report (“FIR” for short) was lodged on 6th August, 2020.

3 The applicant preferred an application for bail before the Special Court under POCSO Act. The said application was rejected by order dated 4th December, 2020.

4 Learned counsel for the applicant submitted as follows:

- (i) The applicant has been falsely implicated in this case. The uncle of victim had registered false N.C. complaint against the applicant on 2nd July, 2020. On 13th July, 2020 and 23rd July, 2020 the sister of applicant had called Mumbai police helpline number 100 to complain against father of victim. The applicant relied upon the screen shot of call.
- (ii) On 3rd August, 2020 quarrel took place between the

applicant and victim's father, since the victim's father had abused the applicant in filthy language. Applicant lodged N.C. No. 1472 with Powai Police Station, Mumbai, against victim's father for offences punishable under Sections 323 and 504 of IPC. The father of victim had also lodged N.C. complaint against the applicant on the same day.

- (iii) The FIR was lodged belatedly. The date of actual incident has not been specified in the complaint or statements of witnesses.
- (iv) Although the alleged incident had occurred during the period from 20th June, 2020 to 27th June, 2020, the FIR was lodged on 6th August, 2020.
- (v) False story was concocted on account of enmity and hostility between applicant and the complainant's family.
- (vi) Medical evidence does not support the case of the prosecution. Although the victim has alleged that he was subjected to unnatural sex, the medical evidence is completely silent and do not corroborate his version.

(vii) The victim is a boy aged about 17 years and 11 months.

He could have disclosed the incident immediately.

(viii) The investigation is completed and charge-sheet is filed. The allegation against the applicant are false, frivolous and baseless.

5 Learned APP submitted that the victim is minor. The offences are of serious nature. Medical evidence may not there, since the victim was examined subsequently. The statement of the complainant and the victim supports prosecution's case. The version of the applicant cannot be accepted at this stage. The victim's statement under Section 161 and 164 makes out the offences. The applicant is charged for the offences under Section 377 of IPC as well as under the provisions of POCSO Act. The applicant is attributed the overtact of committing penetrative sexual assault. There is no delay in lodging FIR.

6 Learned Advocate for the Intervenor submitted that the offence is of serious nature. The victim is minor. The accused was aged about 30 years. The victim was subjected to penetrative sexual assault. The accused is cousin of complainant. Section 6 of POCSO Act provides punishment upto imprisonment for life.

The incident had occurred two months prior to the medical examination, therefore, there cannot be medical evidence. There is no delay in lodging FIR. The complainant in her statement has explained the delay. The victim had gone to Chiplun. After suspecting foul play, the complainant called the victim, and, thereafter, he disclosed the incident to her. Immediately thereafter, FIR was registered. It is further submitted that the statement of the complainant and victim cannot be disbelieved at this stage. The grounds raised in the application for bail, cannot be accepted. Learned counsel for the Intervenor relied upon the decision of the Supreme Court in the case of ***State of Punjab v/s. Gurumeet Singh and Others.***¹ In the said decision, it was observed that a prosecutrix cannot be put on par with an accomplice. Evidence Act does not required corroboration of evidence in material particular. Nature of corroboration must necessarily depend upon facts and circumstances of each case. Reliance is also placed on the Judgment of the Apex Court in the case of ***Prasanta Kumar Sarkar Versus Ashish Chaterjee and Others***², wherein it was observed that the Court while granting bail, several factors are to be borne in mind, such as whether *prima facie* case is made out, nature and gravity of accusation,

1 AIR 1996 SC 1393

2 MANU SCC 0916 2010

severity of punishment in the event of conviction, danger of absconding, likelihood of offence being repeated and reasonable apprehension of witnesses being influenced etc. Learned Advocate also relied upon the Judgment of supreme Court in the case of State of ***Himachal Pradesh Versus Manga Singh***³, wherein it was observed that conviction could be based on testimony of prosecutrix, if it inspires confidence and no corroboration is required, unless there are compelling reason, which necessitates the Court to insist corroboration. Absence of injuries on private part of prosecutrix, can be of no consequence in facts and circumstance of case.

7 I have perused the documents on record. The FIR was lodged on 6th August, 2020. The alleged incident had occurred during the period from 20th June, 2020 to 27th June, 2020. The victim boy is aged about 17 years and 11 months. The accused is related to the victim. Complaints are filed by both the sides against each other. The complaints were filed prior to registration of FIR. According to complainant, the parents of the applicant were suffering from Covid-19, and they were hospitalized. Since the applicant was alone at home, request was made to the complainant's family to send the victim to his house in the night

3 (2019) 16 SCC 759

for sleeping. The victim had visited the house during the period from 20th June, 2020 to 27th June, 2020. The victim did not make any complaint to any of the family member or any other person immediately after the incident. According to complainant, he went to Chiplun. The first informant in her complaint has not mentioned the date on which the victim had left for Chiplun. On 3rd August, 2020, NC complaints were filed by both the sides against each other. Thereafter the complainant had called the victim from Chiplun. The victim came to Mumbai on 4th August, 2020 and then disclosed the alleged incident to the complainant. The complainant is the grandmother of the victim. The FIR does not mention the actual date on which the victim was subjected to sexual assault. According to complainant, on 3rd August, 2020, the applicant had abused and assaulted the complainant and others and he had shown the photographs of the victim in half pant and therefore the complainant suspected of untoward incident and called the victim from Chiplun. The NC complaint with regards to the alleged incident dated 3rd August, 2020, was lodged against the applicant by the complainant for offences under Section 323, 504 and 506 of IPC. The alleged incident had occurred t about 6-30 p.m. the complaint was lodged at 7:30 p.m. Although, according to the complainant, photographs of the victim in half

pant were shown to the complainant. There is no reference of the such allegation in the NC complaint dated 3rd August, 2020. Thus, as per the version of complainant, the victim was called by her after the said incident and surprisingly the victim was back at Mumbai on 4th August, 2020. It is pertinent to note that the victim is almost one month short of 18 years and although the alleged incident had occurred in June 2020, there was no complaint from him. Statement of victim was recorded on 6th August, 2020. In his statement, he has not given the date of incident. He stated that he had visited the house of the applicant during the period from period from 20th June, 2020 to 27th June, 2020. His supplementary statement was recorded on 8th August, 2020. In the said statement he has stated that the accused had shown him obscene video from his mobile and told him that they should commit similar act. This fact was not disclosed by him to the complainant nor he has disclosed this fact in his first statement dated 6th August, 2020. Thus, there is improvement by the victim in his subsequent statement. In the said statement, for the first time he has mentioned the date when he visited Chiplun. According to him, he went to Chiplun on 30th June, 2020 and returned to Mumbai on 4th August, 2020 at 09:00 p.m. The FIR was thereafter lodged on 6th August, 2020. The applicant has also lodged NC

complaint on 3rd August, 2020 against the father of victim for offences under sections 323 504 of IPC, it is thereafter the FIR has been registered. The victim was examined by doctors. The examination was conducted on 7th August, 2020. There were no injuries on external genitals of the victim boy. There was no evidence, of tear, anal tone normal and no evidence of mass per rectum. There is no evidence of discharge and tenderness. The final opinion of doctors is that there is no evidence of injuries over the body and there is no injuries over anus and anal region. The applicant is in custody from 21st October, 2020. The decision relied upon by the learned counsel for the intervernor were delivered in the facts of case. The circumstances existing in the present case *prima facie* creates doubt about the case of the prosecution. Considering the nature of evidence there is no impediment in granting bail to the applicant-accused.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1725 of 2020, is allowed;
- (ii) Applicant be released on bail in connection with C.R. No.424 of 2020, registered with Powai Police Station, Mumbai, on executing P.R. Bond in the

sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall not tamper with the prosecution evidence. The applicant shall not approach the victim or his family members;
- (iv) The applicant shall stay out of jurisdiction of Powai Police Station, till further orders. The applicant shall furnish his residential address to the investigating officer;
- (v) Applicant shall attend the trial Court on the date of hearing;
- (vi) Bail Application No.1725 of 2020, stands disposed of accordingly.
- (vii) Interim Application No.441 of 2021, disposed of.

(PRAKASH D. NAIK, J.)