

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 2200 OF 2019**

Rahul @ Raosaheb Vinayak Patil

.....Applicants

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Ms. Mayuri D. Hatte for the Applicants.

Mr. Y.M. Nakhwa APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 26th NOVEMBER, 2021.****P.C.:-**

This is a successive Application for bail under Section 439 of the Code of Criminal Procedure (for short, "*the Cr.PC.*") in CR No.I-335 of 2016 dated 13th October, 2016 registered with Khadakpada Police Station, District Thane for the offence punishable under Sections 363, 376, 354(A), 328 read with Section 34 of the Indian Penal Code and under Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012, (for short, "*the POCSO Act*"),

2 The earlier Application preferred by the Applicant bearing Bail Application No.1803 of 2017 was dismissed, as withdrawn with liberty to the Applicant to file a fresh Application for bail before the Trial Court, if the trial arising out of the aforesaid crime i.e. Atrocity Special Case No.6 of 2017, does not commence within a period of six months from the date of

passing of the said Order.

Ms. Hatte, learned counsel appearing for the Applicant submitted that, till date the trial of the said case i.e. Atrocity Special Case No.6 of 2017 pending on the file of the District Judge-2 and Additional Sessions Judge, Kalyan has not commenced. She submitted that, as of today the charge has not been framed in the case.

3 In view thereof, I heard learned counsel for the Applicant and the learned APP afresh. Perused entire charge-sheet.

4 Record reveals that, in her statement recorded under Section 161 of the Cr.P.C., the prosecutrix, who was aged about 15 years on the date of lodgment of the crime i.e. on 13th October, 2016, has in detailed narrated the acts committed by the Applicant and as contemplated under Sections 376 of the Indian Penal Code and 4, 8, 12 of the POCSO Act. However, in her statement dated 20th October, 2016 recorded under Section 164 of the Cr.P.C. by the learned Judicial Magistrate, First Class, Kalyan, the allegation of commission of forcible sexual intercourse by the Applicant is silent.

5 Perusal of the said statement recorded under Section 164 of Cr.P.C. of the prosecutrix, *prima facie* indicates that, the prosecutrix due to the quarrel with her family members decided to leave her parental house and thereafter gave a phone call to the Applicant and requested him to leave her at Kolhpaur. It is only the fact that, the Applicant pressurized the prosecutrix to drink cold-drinks which according to the prosecution were

stupefied and after drinking the same she felt giddiness and become semi-conscious has been mentioned. No other allegations of aggravated form of sexual assault has been narrated therein.

6 The Applicant is in jail since 13th October, 2016. As noted earlier, the trial of the special case has not yet commenced. In view thereof, Applicant can be released on bail.

At this stage, learned APP submitted that, there are 3 antecedents at the discredit of the Applicant. Perusal of list of antecedents indicates that, the same are bodily offences registered against the Applicant. The apprehension of the prosecution that, if released on bail, the Applicant may tamper with the evidence and threaten the prosecutrix, can be taken care of by imposing stringent conditions.

7 Hence the following order:-

- a) Applicant shall be released on bail in CR No.I-335 of 2016 dated 13th October, 2016 registered with Khadakpada Police Station, District Thane, on his furnishing P.R. bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- b) After his release from Jail, the Applicant shall not enter the jurisdiction of Thane Police Commissionerate till the conclusion of trial of Atrocity Special Case No. 6 of 2017, except for

attending the Trial Court on the scheduled dates.

- c) Before his release from Jail, the Applicant shall provide documents of his prospective residence to the Investigating Officer of the Khadakpada Police Station and also to the Trial Court.

The Investigating Officer and/or the concerned Officer attached to the Khadakpada Police Station shall verify the said documents and will accordingly submit its report to the Trial Court about its genuineness.

The Applicant shall also give his mobile phone number if he possesses so, to the Khadakpada Police Station.

- d) Applicant shall attend all the dates before the Trial Court unless exempted on medical grounds and only for attending the Trial Court, the Applicant is permitted to enter the jurisdiction of Thane Police Commissionerate and not otherwise.

After the Applicant attends the Court proceedings, he is directed to immediately remove himself from the jurisdiction of Thane Police Commissionerate without any delay in that behalf.

- e) Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
- f) In case of breach of any of the conditions, the prosecution will be at liberty to file an Application for cancellation of bail.
- g) Bail Application is allowed in the aforesaid terms.

8 All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
Date:
2021.11.30
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