

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.782 OF 2021

(Akash s/o Ramrao Pawar Vs. State of Maharashtra thr. PSO PS Ramnagar,
Chandrapur, Tah. & Dist. Chandrapur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Mahesh Rai, Advocate for Applicant.
Mr. N. R. Rode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 8th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 6/2021 registered with Police Station Ramnagar, Chandrapur for offences punishable under sections 376 (2) (I) of the Indian Penal Code and section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The prosecution case is that on 22.01.2021 the applicant took the eighteen months old child on his motor-cycle, and when the child was dropped home she was crying and blood was oozing out from her private part. The child was taken to a Doctor. However, at that time the mother of the child informed the Doctor that the injury was accidental. The child was then examined by Dr. Musle, who suspected that the injuries are not accidental and the child was sexually assaulted. Dr. Musle *prima facie* view is confirmed in the medical examination conducted at the

Government Hospital. The injuries which are noted are thus:

“One day old hymen, injury cut, fourchette tear cut at 6’o clock position, no active bleeding.

3. Considering the nature of the injuries, it is apparent that the child victim was sexually molested. The injuries are not consistent with the theory of an accident. This is a *prima facie* observation and ultimately it would for the trial Court to come to an appropriate conclusion, on the basis of the evidence adduced.

4. The statement of the maternal grand-father of the child victim Shri Prakash Jadhav, which is recorded on 24.01.2021 shows that the applicant dropped the child victim at his place between 08:00 to 08:30. The victim was bleeding and her knicker was worn improperly with the inner portion out. Prakash Jadhav questioned the applicant who denied that there was any accident.

5. Considering that the material on record indicates that the injuries suffered by the child victim, and which are consistent with sexual assault, are caused when she was in the custody of the applicant, a formidable *prima facie* case is made out.

6. The learned counsel Mr. Rai invites my attention to an affidavit dated 05.07.2021, i.e. an affidavit sworn

forty-eight hours prior to the filing of this application. It is purportedly sworn by Uttam Rama Chavan, who is the paternal grand-father of the victim and he purports to exonerate the applicant. It is stated that the applicant dropped the child victim at her maternal grand-father's house at 04:00 p.m. and thereafter at the request of the parents of the child victim the applicant took her to the Doctor. The affidavit, assuming that Uttam Rama Chavan is aware of what is stated and its implication, is not even worth the paper on which it is drafted. In the third line of the affidavit it is stated that the affidavit is being drafted **on 22.01.2021**. In the third line from the bottom of the first page, the deponent states that police action against the **deponent** is wrong. In my *prima facie* view, there is a clear attempt by the applicant to subvert the course of justice and the so called affidavit, rather than furthering the cause of the applicant, is in itself a strong reason not to grant bail.

7. The material on record is overwhelming and the possibility that the applicant shall subvert the witnesses and tamper with evidence is a real possibility.

8. The application is dismissed.

JUDGE