

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

CRIMINAL APPEAL NO. 492/2021

Dr. Sohan S/o Narayandasji Lohia,
Aged about 42 years, Occ. Medical Practitioner,
R/o. Kelkarwadi, Tah. & Dist. Wardha.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Wardha Police Station, Wardha.
2. Ajay Rameke,
Aged adult, Occ. Teacher,
R/o. Karla Chowk, Vaishnavi
Complex-1, Wasudev Naga,
Wajurkar, Layout, Wardha,
Dist. Wardha.

.... RESPONDENTS

Shri M. B. Naid, Advocate for appellant.
Shri A. R. Chutke, APP for respondent No.1/State.
Shri R. M. Sharma, Advocate (appointed) for respondent No.2.

**CORAM : VINAY JOSHI, J.
DATED : 03.12.2021**

JUDGMENT

Heard.

2. **Admit.** By consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. This is an appeal for grant of regular bail in terms of Section 439 of the Code of Criminal Procedure. Crime was registered on 16.01.2021 vide Crime No. 1448/2021 with the Police Station, Wardha for offence punishable under Sections 354A(1)(i) of the Indian Penal Code, Section 3(1)(w)(i), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC and ST Act') and under Sections 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 Act ('POCSO'). In connection with said crime, the applicant – Medical Practitioner was arrested on 16.11.2021. He has applied to the Court of Sessions for grant of regular bail but remained unsuccessful. In turn, this appeal seeking bail on the ground of innocence, false implication, inadequacy of material etc. Besides that, it is canvassed that the appellant is reputed Medical Practitioner having deep roots in the Society. Already, custodial interrogation is over and appellant undertakes to cooperate with the Investigating Agency.

4. The State resisted bail by filing reply affidavit. The contents of the Police Report are narrated in brief. Besides that, it is submitted that the appellant is influential person of the Society and if at the midst of the investigation, he is released on bail, the process of the investigation will be seriously hampered. There is *prima facie* evidence against the appellant

about his complicity in crime. The alleged offence is of serious nature as the appellant has outraged the modesty of victim girl amounting to offence under the provisions of Indian Penal Code as well as under the provisions of the POCSO Act. The accusation is well founded and *prima facie* case is made out. Hence considering the gravity of the offence, the appellant is not entitled of bail. In response to the notice, the victim's father appeared and resisted the bail by raising somewhat similar grounds like the prosecution.

5. The report was lodged by the victim girl aged 15 years. It is alleged that on 15.11.2021 around 08.00 p.m., the victim girl went to the Eye Hospital of the appellant along with her mother for eye treatment. The appellant is Ophthalmologist by profession. There was rush in the Hospital. The appellant was examining patients turn by turn in his cabin. When the victim's turn came, she went inside the cabin for eye check-up whilst her mother was asked to wait outside. The appellant started checking victim's eyes and asked her to sit on chair. While examining the victim, as of sudden, the appellant hold victim's shoulders. She was frightened and moved little bit behind. However, appellant asked her not to move behind and pressed her chest/breast by lifting her top. The victim girl got frightened and remained seated on the Chair. Thereafter, the appellant called victim's mother and stated about increase of her spectacle number. When victim came out of the cabin, her mother noticed that victim was in frightened condition. On asking, victim girl, started to weep and informed the things as

happened. Victim's mother informed her husband and then in late night, they went to the concerned Police Station and lodged report.

6. The appellant seeks bail by stating that he has been falsely implicated in the case. The appellant is Ms (Ophthalmology) running eye hospital. He carries high reputation in the Medical fraternity. It is stated that at the time of examination of victim, her mother and lady attendant were inside in the cabin. According to the appellant, while making eye check-up, victim informed that she was also having pain at her shoulder and feeling dumbness from shoulder to finger tips of both hands. On such complaint, the appellant has only checked her by pressing it with finger and advised to show to other Doctor. It is argued that since the patient did not want to pay professional fees, they raised a dispute and created scene. On that count, a false report has been lodged.

7. Heard both sides and gone through the case diary. The victim's statement says about the occurrence as stated in the First Information Report (FIR). She was specific on the point that the appellant (Doctor) had asked her whether she has sensation at her hand, to which she replied in the negative. Thereafter, the appellant asked her to raise her both hands which she did. Then the appellant caught hold her hands and pressed her chest and also touched her breast by lifting top. The victim got frightened and felt very bad by such behaviour. The Police paper contains statement of victim's

mother who stated that the appellant took victim for check-up in his cabin and closed the door. She waited outside and after 15 minutes, the victim came out. She noticed that the victim was in frightened conditions, hence she asked the things on which the victim girl disclosed the happenings.

8. During course of investigation, the Police have collected birth certificate of victim to establish that the victim was a 'child' within the meaning of Section 2(d) of the POCSO Act. During the course of investigation, some more statements are recorded to support the prosecution case that at the relevant time, victim girl was taken into the cabin for eye check-up. During the course of investigation, the Police have seized O.P.D. patients' register bearing entry in the name of victim.

9. *Prima facie*, it is evident from the appellant's defence as set out in para 3 in the application that at relevant time, he has examined victim girl in his examination room. He also stated that when the victim complained about feeling dumbness from her shoulder, he has checked by pressing it with finger. The said defence *prima facie* supports elementary things that at the relevant time, the appellant has examined patients in chamber. Since the victim belongs to the Scheduled Caste and Scheduled Tribes, the Police have invoked the provisions of Sections 3(1)(w) and 3(2)(va) of the SC and ST Act along with other offences. Material collected during investigation make out a *prima facie* case about aggravated form of sexual assault.

10. Grant of bail though being discretionary one, however such discretion has to be exercised in judicious manner and not as a matter of course. It is well settled that amongst other circumstances, the factors to be born in mind while considering appeal/application for bail which are as below:-

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

11. In the light of above guiding factors, appellant's entitlement for bail is to be assessed. It is a matter of trial to see whether the defence about false implication on account of dispute of paying fees is probable. At this juncture, the statement of victim makes out a reasonable ground to believe the accusation. The Police paper indicates that during the course of investigation, the Police tried to collect CCTV Footage but hard disk was found to be empty. The process of investigation is going on. Report regarding occurrence was lodged within 3 to 4 hours from the incident. True the appellant is Medical Practitioner running Eye Hospital. Having regard to the nature of accusation,

most of the crucial witnesses would be staff members and other related persons to the Hospital. The appellant being owner of the Hospital, certainly, he is in dominating position over the staff. If at this preliminary stage, he is released on bail, there are high chances of tampering and influencing the witnesses. The appellant - Medical Practitioner was supposed to do a divine duty. The patient carries high esteem about the Doctor placing them next to God. The offence is of serious nature as by taking disadvantage of high position, the appellant allegedly outraged modesty of minor vulnerable girl which also attracts the provisions of the Special Act. In such kind of cases, the Police must get proper opportunity to investigate the matter for reaching to the truth. Mere feeling that the appellant is on bail, may also pressurize the staff members and would ultimately affect the smooth process of investigation.

12. The appellant was arrested on 16.11.2021 and the investigation is at preliminary stage. Having regard to the seriousness of offence and particularly that the investigation is at initial stage, it is not proper to release him on bail. In view of that, application being devoid of merits, stands rejected.

13. Fees be paid to the appointed counsel for the respondent No. 2.

JUDGE