

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

CRIMINAL APPEAL NO. 505 OF 2021
(Akash s/o Gajanan Tale Vs. State of Maharashtra & Anr.)

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

Court's or Judge's orders.

Mr. C.B. Barve, Advocate for the appellant.
Mrs. M.A. Barabde, A.PP for respondent No.1.

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**CORAM : M.S. SONAK &
PUSHPA V. GANEDIWALA, JJ.
DECEMBER 02, 2021.**

Heard Mr. Barve, learned counsel for
the appellant, and Mrs. Barabde learned A.PP. for
respondent No.1/ State.

2] This is an appeal against the order
dated 08/10/2021 rejecting the appellant's
application for bail.

3] The appellant, in this case, has been
charged with the offenses punishable under Section
376(2)(j)(3), 354-A, 354-D and 506 of the Indian
Penal Code read with Sections 4 and 6 of the
Prevention of Children From Sexual Offences Act,
2012 (for short "POCSO Act") read with certain
sections of the Scheduled Castes and the Scheduled
Tribes (Prevention of Atrocities) Act, 1989.

4] Mr. Barve submits that in the report
dated 02/0/2021 which was lodged by the victim,

there was no reference to the present appellant indulging in any sexual intercourse with the victim. He submits that it is only in the supplementary statement of the victim recorded on 04/06/2021 that there is a reference to such an incident. He submits that supplementary statements should normally not be relied upon in such matters because there is the possibility of improvement and embellishment as has happened in the present case.

5] Mr. Barve submits that in this case, to date, no spot panchanama has been carried out, and in the absence of any spot panchanama, there is no possibility of conviction.

6] Mr. Barve relies on the decision of the learned Single Judge of this Court in **Ratnakala Martandrao Mohite Vs. State of Maharashtra, 2019 SCC OnLine Bom 575** and on the decision of the Division Bench of this Court in **Moreswar s/o Bajirao Halami Vs. State of Maharashtra (Criminal Appeal No. 222/2018 decided on 21/09/2021)** to submit that this is a fit case for the appellant's release on bail.

7] Mrs. Barabde, learned A.P.P. defends the impugned order based on the reasoning reflected therein. She points out that the victim, in this case, was only 13 years old and the offenses with which

the appellant is charged are quite serious. She submits that the possibility of tampering with evidence also cannot be ruled out if the appellant is released on bail. She, therefore, submits that this appeal may be dismissed.

8] We have heard the rival contentions and also perused the material on record.

9] According to us, there is no case made out to interfere with the impugned order by which bail has been denied to the appellant. The learned Special Court has examined the material on record and applied the correct principles in matters of grant and refusal of bail.

10] The victim, in this case, was only 13 years of age. Even in the first report filed by the victim, there is a clear reference to the present appellant. The allegation is that the appellant based upon some pictures of the victim molested her. True, in the first report, there is no direct reference to the incident of sexual intercourse, however, we must appreciate that the first report given by the victim had focused upon the acts of some of the co-accused persons.

11] In the supplementary statement recorded hardly two days thereafter, there is a clear reference to the appellant and the acts committed by

him. There are allegations about blackmail, the demand for sexual favor, and even actual rape on a minor.

12] Having regard to all these facts, we detect no error in the impugned order to warrant any interference. The decisions relied upon by the learned counsel for the appellant turn entirely on their facts. Besides, both the decisions are related to the appreciation of evidence once the trial is complete. In the present case, a charge sheet has just been filed and the trial is yet to commence.

13] Having regard to the material on record as also the provisions of the POCSO Act, we do not think this is a fit case to enlarge the appellant on bail at this stage.

14] For the aforesaid reasons, we dismiss this Appeal. There shall be no order for costs.

15] Though we dismiss this Appeal, we clarify that in case if there is no progress in the trial within six months or there is any change in circumstances then the appellant will have the liberty to seek bail.

(PUSHPA V. GANEDIWALA, J.)

(M.S. SONAK, J.)

Sumit

Digitally signed by SUMIT CHETAN
AGRAWAL
Signing Date: 03.12.2021 16:35