

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.106 OF 2022

Rajesh s/o Uttamrao Vaishnav

..Applicant

VERSUS

The State of Maharashtra and Another

..Respondents

...
Advocate for Applicant : Mr.Chandrakant V. Thombre
APP for Respondent No.1 : Mr.S.B.Narwade
Advocate for Respondent No.2 : Mrs.J.S.Aute
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 26th April, 2022

DATE OF PRONOUNCING ORDER : 5th May, 2022

ORDER :-

1. The applicant has been arrested on 8th May, 2021 in connection with Crime No.0471 of 2021 with M.I.D.C. Waluj Police Station, District Aurangabad, for the offence punishable under Section 354-A of the Indian Penal Code (IPC) and under Sections 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Heard Mr.C.V.Thombre, learned Advocate for the applicant, Mr.S.B.Narwade, learned APP for respondent No.1 and

Mrs.J.S.Aute, learned Advocate for respondent No.2.

3. The learned Advocate appearing for the applicant submits that since the investigation is complete and charge-sheet has been filed, the custodial interrogation of the applicant is not necessary for the purpose of investigation. In the FIR, which is lodged by the daughter of the applicant, allegations are made attracting the provisions of Section 354-A of the IPC and Sections 8 and 12 of the POCSO Act and it is stated that the act was going on from 2016 to 2021. No immediate complaint appears to have been lodged and it is then stated that even the wife of the present applicant was knowing about all these acts yet she has also not lodged any report. The real fact is different. The minor girl had love affair and therefore, the applicant was advising her not to indulge in such activities. The informant got annoyed with the interference by this applicant and she has lodged false complaint. Infact, it was the duty of the father that if the minor is committing some mistakes and wrong acts then the minor should be advised and brought on the right track, however, it appears that the girl did not understand the same and lodged the report. However, now she has filed affidavit-in-reply stating that she had the love affair in 2016 and then she states that because of the insistence by the applicant, she had even lodged

report for the offence punishable under Section 376 of the IPC against the said boy and the charge-sheet has been filed. The Sessions trial bearing Sessions Case No.158 of 2021 is pending before the Sessions Court, Aurangabad. It is then stated that because of the pressure from her friend, she had lodged the said report. She wants to pursue her education and wants to concentrate on the same. She has now no objection if the applicant is released on bail as the applicant is in jail for more than six months. The applicant is ready to abide by terms of the bail.

4. Per contra, the learned APP for respondent No.1 objected the application and submitted that the victim cannot pick and choose method and put the entire system to standstill by filing such affidavit-in-reply, rather it appears that she is under pressure now because of the tampering with the prosecution witnesses that means by applying pressure from relatives it appears that she has been prompted to file such kind of affidavit which shall not be accepted. The FIR makes clear allegations against the applicant as to how he was behaving with the girl. The mother ultimately would be in dilemma and tried to avoid further acts and therefore, she had sent the girl to her sister's place at different times. The heinous mentality of the applicant

can be seen that he had done obscene acts and sexual harassment to the daughter. The last act has even been witnessed by the mother. The statement of other witnesses also state that the applicant, who is a drunkard used to behave in obscene way with the daughter and therefore, even other persons had given word of advise to the applicant yet there was no improvement in him. When there is ample evidence against the applicant, he shall not be released on bail.

5. The learned Advocate representing the informant has relied on the affidavit-in-reply of respondent No.2 and submitted that she has no objection if the applicant is released on bail.

6. At the outset, it is required to be made clear that it is not on the wish of the informant that the Court can release the accused applicant on bail. There are parameters which are required to be legally considered. There is no question of emotional aspect. Here the merits will have to be seen. It appears to be a very unfortunate case wherein the daughter has made allegations against the father that he used to behave with her in a manner which amounts to sexual harassment. She has stated that when she was 16 years of age, the applicant used to show her sex videos and used to touch her private part and other

parts of the body. Even at that time, the applicant had demanded sexual favour from her. She told the said fact to her mother but the mother had not believed in her and each time the mother said that she would advise father. Whenever mother used to give advise to father, he used to behave properly with the informant but again used to continue with same behaviour with the informant. The incident alleged to have taken place on 3rd May, 2021, when she could not sustain the harassment from the applicant even after that complaint application, another incident had taken place at about 04:30 p.m. on 6th May, 2021 in which the applicant had hugged her and touched the parts of her body in obscene manner. At that time, she cried for help and then the mother and the brother came running at that place. She in clear words said that since it was beyond her sustainability and the due to tension of that harassment, she has suicidal thoughts and therefore, with her mother she went to the Police Station and lodged the report. Thus, it can be seen that *prima-facie* the contents of the FIR would show the picture as to how the applicant used to behave and why after so many years the informant had lodged the report. Her statement under Section 164 of the Code of Criminal Procedure is also on the same line of the FIR. Statement of mother is also important here and she has stated that when the daughter disclosed about the

behaviour of the father with her about 3 to 4 years ago then she had tried to ask the applicant about the same. When he told that nothing has happened and he scolded them, it appears that they had kept quite. About 8 to 9 months prior to the incident again she gave advise to the husband and then sent the daughter to her sister's place for about one and half month. After the informant returned back, again the applicant started harassing her and therefore, informant was sent to another sister's home of her mother where she stayed for about six months. Thereafter, informant came back and upon advise by this witness and the brother of the applicant, applicant had promised that he will behave properly. She reiterates the incident that had taken place at 04:30 p.m. on 6th May, 2021.

7. Statement of another witness, who is the friend of the applicant, is also required to be considered. His help appears to have been taken to give advise to the applicant and at that time the facts were told to him and he had also given advise to the applicant. On the similar lines, there is the statement of the brother of the applicant. Therefore, there appears to be *prima-facie* evidence against the applicant.

8. Now, turning towards the affidavit-in-reply and the defence

that has been taken about the love affair of the informant. No doubt it appears that the informant has lodged the FIR against the boy for the offence punishable under Section 376 of the IPC and Sessions case is pending. Now the present applicant - the father intends to utilize that case as his defence, however, the fact that is required to be noted is that in the affidavit-in-reply the informant has stated that, that offence against the boy with whom the informant is alleged to have lodged the report under Section 376 of the IPC, it was at the instigation of the present applicant. If the applicant intends to utilize this affidavit-in-reply then an interpretation is possible that the applicant has made the informant as a scapegoat and forced her to lodge false report against the boy. The affidavit-in-reply further states that the said boy has then forced her to lodge false complaint against her father. It is to be noted that when she lodged the report, she has given her age as 20 years. A girl cannot afford to go on with lodging such false reports by saying that she has been pressurized. Infact, in such acts blame would always be on her character. A girl of 20 years of age definitely has sufficient understanding capacity and implicating a person falsely also requires courage. By saying that she wants to pursue her study, she cannot get away by saying that she has no objection for the release of the applicant. At the cost of repetition, it can be said

that the Court cannot pass an order of bail merely because the informant has given no objection. When the investigation has been completed and there is material against the present applicant, there is no question of releasing him on bail. Rather the said affidavit-in-reply can also be considered as the example of tampering with the evidence of the prosecution, which goes against the applicant and therefore, this cannot be said to be a fit case where the discretionary power of this Court would be exercised in favour of the applicant. Hence, Bail Application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

SPT