

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.194 OF 2022

VINOD MADHUKAR LONDHE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. Amey Sabnis h/f Mr. J. R. Shah, Advocate for applicant.
Mr. S. B. Narwade, APP for respondent No.1 – State.
Mr. V. S. Valse, Advocate for respondent No.2 (Appointed).
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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 27.04.2022

Pronounced on : 06.05.2022

ORDER :-

1. Applicant came to be arrested on 17.11.2021 in connection with Crime No.316 of 2021 registered with Ramanand Nagar Police Station, Dist. Jalgaon for the offences punishable under Sections 363, 354, 376 of Indian Penal Code and under Section 4 and 8 of Protection of Children from Sexual Offences Act (hereinafter referred to as the “POCSO Act”). He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. Amey Sabnis holding for learned Advocate Mr. J. R. Shah for the applicant, learned APP Mr. S. B. Narwade for respondent No.1 – State and learned Advocate Mr. V. S.

Valse, who is appointed to represent the cause of respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that initially when the FIR was registered on 16.11.2021, it was under Section 363, 354 of Indian Penal Code and Section 4 and 8 of the POCSO Act. In the FIR lodged by the mother of the victim, it has been stated that around 8.00 a.m. on 15.11.2021, the informant could not notice daughter and, therefore, they searched for her, however, at about 6.00 p.m., the mother of the present applicant left the victim to the house of the informant. At that time, the daughter narrated that, when she had gone to dump garbage at about 8.00 a.m. she was dragged by the present applicant by holding her hands to his house and it was told to her that if she doesn't come along with him, he would commit suicide by leaving a chit in her name. She got frightened and then in the meantime, he had pulled her towards him and with ill intention by keeping his hand on her breasts told that she should love him, otherwise he would commit suicide. She then disclosed that for the whole day she was kept by the applicant besides him and he was threatening her on one or the other pretext. Thereafter, the informant has lodged the report immediately. Now, the investigation is complete and charge-sheet is filed. The statement of the victim that was taken on 19.11.2021 is also on the same line. The statements of witnesses, which were

recorded till 22.11.2021 are on the same line. It appears that the girl was sent for medical examination on 17.11.2021 and while narrating the incident to the medical officer, she has come with a different story. She told that after she was dragged inside the house by the applicant, the applicant had put chemical stained cloth on her face. She got sedated and gained consciousness after sometime. She saw the applicant and his mother before her eyes and thereafter, the mother had left her to home. Still, there was no story about sexual intercourse was given. Yet, the medical officer has opined that the possibility of sexual intercourse cannot be ruled out and the final report would be given after lab analysis. When till the girl was sent to medical examination, there was absolutely no question of offence under Section 376 of Indian Penal Code and also even on the basis of history that was narrated, there was no occasion for the medical officer to give such kind of opinion. Further, the copy of the charge-sheet which has been supplied to the applicant does not show that any supplementary statement was recorded by police either of the informant or even the victim. Statement of victim under Section 164 of the Code of Criminal Procedure has been recorded by learned Magistrate and she has again changed the story by saying that when she had gone to dump the garbage and was returning, her hand was pulled by the applicant and knife was shown to her and dragged her

to his house. She then states that she was ravished by the applicant twice. Applicant's mother came home in the evening and then she had left her to her house. The victim says that she had given entire story to her grandmother and grandmother had told the said fact to the mother. If we consider the statement of grandmother, she does not say about the rape. Therefore, with this kind of evidence, when the prosecution witnesses are not consistent, the applicant need not be kept behind bar. It would take long time to stand his trial and, therefore, he deserves to be released on bail.

4. Per contra, learned APP as well as learned Advocate for respondent No.2, who has been appointed as respondent No.2 – original informant though served had not appeared, raised strong objection for grant of bail to the applicant since he has committed a heinous crime. Learned APP submitted that because of the age and fear in the mind, the informant has not stated entire story when her statement was recorded by police. But, she has narrated everything before the Magistrate. The applicant does not deserve any sympathy.

5. As the entire story and what evidence has been collected has already been narrated, it has not been reproduced. It appears that the victim has made changes in her statements. The informant though states

as to what was disclosed by the victim to her, it appears that she had not taken the victim in confidence and had not tried to get full details as to what had happened in the house of the applicant. Therefore, the facts as regards Section 376 of Indian Penal Code are concerned, they appear to be raised at a belated stage and also after improvisation. The girl is definitely minor and if we consider the initial disclosure, it would disclose offence under Sections 363, 354 of Indian Penal Code and Section 4 and 8 of the POCSO Act. The applicant is in jail since considerable long time. It would take long time to stand his trial. Therefore, he deserves to be released on bail, however, taking into consideration the fact that the applicant is resident of the same locality, necessary conditions are required to be imposed for the safety of the victim as well as the informant and family. With these observations following order is passed:-

ORDER

- I) The application is hereby allowed.
- II) Applicant – Vinod Madhukar Londhe, who has been arrested in connection with Crime No.316 of 2021 registered with Ramanand Police Station, Dist. Jalgaon for the offences punishable under Sections 363, 354, 376 of Indian Penal Code and under Sections 4 and 8 of the POCSO Act, be released on P R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/-

each.

III) The applicant shall not reside or visit Rajeev Gandhi Nagar, Dist. Jalgaon till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with mobile number to the trial Court as well as to the Investigation Officer.

IV) He shall not tamper with the evidence of the prosecution in any manner.

V) He should not indulge in any criminal activity.

VI) He should cooperate with the investigation.

VII) Fees of the learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub-Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

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