

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 202 OF 2022

Umesh S/o Ashru Kshirsagar

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. R. G. Hange, Advocate for the applicant.

Mr. G. W. Wattamwar, APP for respondent/State.

Mr. Sayyed Tauseef Yasin, Advocate for respondent No. 2.

CORAM : M.G. Sewlikar, J.

DATE : 25th MARCH, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for enlargement of applicant on bail in connection with Crime No. 0147/2021 registered with Patoda Police Station, Dist. Beed for the offences punishable under Sections 305, 354-A of the Indian Penal Code and under Section 12 of Protection of Children from Sexual Offences Act.

2. Applicant is the neighbour of the informant. The victim (since deceased), aged 13 years, was the daughter of the informant.

It is alleged in the First Information Report that the applicant used to throw pebbles at the victim when she was taking bath. This incident was again repeated after some days. On 31st July, 2021, victim and her elder sister, who is also a minor, were sitting in front of their house. At that time, applicant, aged 30 years, came there, unzipped the pant and showed his private part to the victim and her elder sister.

3. On 5th August, 2021, all the family members of the informant except the victim had gone for attending marriage at village Chumbhali. When they came back at about 5.30 pm, they noticed that the victim had ended her life by hanging. Soon thereafter, this incident was reported to the police. First Information report was lodged alleging all the three incidents narrated above.

4. Heard Shri Hange, learned counsel for the applicant, Shri Wattamwar, learned APP for the State and Shri Sayyed Tauseef Yasin, learned counsel for respondent No. 2- informant.

5. Learned counsel Shri Hange submits that there is no evidence to indicate that the applicant abetted the commission of

suicide. He submits that the victim was in love with one Sheru Mehboob Shaikh. He submits that the CDRs of said Sheru Mehboob Shaikh were also called for. However, they are not part of charge-sheet. He submits that the possibility of deceased committing suicide because of her relations with Sheru Mehboob Shaikh cannot be ruled out. He further submits that her hymen was ruptured. He submits that even if prosecution case is taken at its face value, it cannot be said that the applicant had an intention to bring about suicide of the victim. At the most, his intention could be to eve tease the victim and her elder sister. He further submits that the relations between the applicant and the informant are strained. The applicant has, therefore, been falsely implicated in this case. He further submits that it is difficult to fathom that on the background of eve teasing of the applicant, the parents of the victim would leave her alone at the house. This conduct of the parents indicates that there was no harassment from the applicant. Otherwise, care would have been taken by the parents to keep someone with the victim.

6. Learned APP and learned counsel Shri Sayyed Tauseef submit that the victim was minor i.e. 13 years of age. The incidents needs to be viewed from the point of view of the victim who was of

tender age. They submit that the act of the applicant in showing the private part to the victim left the victim in a state of shock. The incident of pelting pebbles at the victim while she was taking bath and the incident of 31st July, 2021, drove her to take this extreme step. They, therefore, pray for rejection of the application.

7. From the tenor of the First Information Report, it appears that the applicant did not have any intention to bring about suicide of the deceased. Whether the victim was driven to take such extreme step will be clear during the trial. Applicant is behind the bars for more than eight months. Having regard to this, I am inclined to release the applicant on bail. Hence the following order:-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.30,000/- (Rs. Thirty Thousand) with one solvent surety in the like amount in connection with Crime No. 0147/2021 registered with Patoda Police Station, Dist. Beed for the offences punishable under Sections 305, 354-A of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act, on condition that he shall not enter Patoda Taluka till

conclusion of the trial.

iii) Application stands disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

dyb