

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

BAIL APPLICATION NO.353 OF 2022

Arjun Dipak Pardeshi

..Applicant

VERSUS

The State of Maharashtra and Another

..Respondents

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Advocate for Applicant : Mr.Kunal A. Kale

APP for Respondent No.1 : Mr.A.M.Phule

Advocate for Respondent No.2 : Mr.A.R.Hange (appointed)

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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 29th October, 2021 in connection with Crime No.0903 of 2021, registered with Rahuri Police Station, District Ahmednagar, for the offence punishable under Sections 376, 377, 323, 506 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Protection of Children from Sexual Offences (POCSO) Act. This application is filed under Section 439 of the Code of Criminal Procedure.

2. Heard Mr.K.A.Kale, learned Advocate for the applicant, Mr.A.M.Phule, learned APP for respondent No.1 and Mr.A.R.Hange, learned Advocate for respondent No.2.

3. The learned Advocate for the applicant has stated that the applicant has been falsely implicated. The charge-sheet is already filed and therefore, further physical custody of the applicant is not required. It appears from the contents of the First Information Report (FIR) and Police Papers that victim has given imaginary dates of offence; at one place she has given the date of offence as 26th September, 2021, however, in other place the date is 26th October, 2021. The medical examination of the victim negates the theory of rape on her. The false implication was due to Non-Cognizable complaint of mother of the applicant on 26th October, 2021. That Non-Cognizable complaint was given against the father and brothers of the victim. There is absolutely no reasonable ground given by the informant as to why she has lodged the complaint with so much of delay. A concocted story involving the applicant appears to have been put forth and from the incident which had started in respect of throwing garbage on the side of the house of the accused, an unbelievable story has been blown out. The applicant is ready to abide by terms of bail.

4. Learned APP for respondent No.1 strongly opposed the application and submitted that there is ample evidence against the applicant.

5. Though the informant i.e. victim and guardian were served, they did not remain present and therefore, Mr.A.R.Hange, learned Advocate was appointed to represent the cause of respondent No.2. He has also stated that there is ample evidence against the present applicant and the disclosure was made by the informant to her family members immediately. The applicant had taken disadvantage of the fact that the mother of the informant is went missing since last two years. With that kind of emotional story, when hopes that were shown to the informant that her mother has come at the place, she had innocently gone along-with the applicant, where thereafter, she was ravished. The applicant does not deserve sympathy.

6. It is to be noted that the informant is a 14 years old girl. She has stated that her mother is missing since last two years. Her elder sister is married and she had come to informant's house to meet the father and sister on the day when the alleged incident took place. The informant states that under pretext that the applicant would show the place where the mother of the victim has come, took her to a house which was in dilapidated condition/unused condition. She further states that her father and brother had gone to leave the married sister to her house and she was alone at that time. After the father returned on the

next day morning, she had disclosed entire incident to her father. But on the day of incident after the alleged incident, it is said that she has disclosed the said incident to her paternal uncle. She then states that her father, uncle and brother all went to the house of the applicant and asked as to why he has done so. Then, it is stated that the family members of the applicant gave threat to kill the entire family of the informant. She then states that as threat to kill was given, due to fear, they had not lodged the report, however, she wants to file the FIR and therefore, she had come to the concerned Police Station.

7. Investigation is complete and charge-sheet is filed. Therefore, what evidence has been gathered against the applicant is required to be considered. As regards the medical evidence is concerned, the fact is to be borne in mind that the alleged incident has taken place on 26th September, 2021, the victim lodged the report on 28th October, 2021 and the victim girl was examined on 29th October, 2021. Therefore, the examination was not done immediately and that can get reflected in the report. But unfortunately, there is some scoring done by the Medical Officer and at some places which are already forming part of the report, on printed part, tick marks are given. It is stated in the report that there are no signs of use of

force on the person of prosecutrix, though, it is then stated that final opinion is reserved pending availability of Forensic Laboratory (FSL) Report and it was then tried to be stated that possibility of sexual intercourse cannot be ruled out. However, all this portion have been scored out and it is stated that overall findings are consistent with sexual intercourse/assault, however final opinion is kept pending till receipt of FSL reports and evidence of sexual intercourse/assault cannot be ruled out. Whether to believe such medical certificate itself, is a question. Definitely we cannot go in deep at this stage but then advantage will have to be given to the accused in respect of that scoring out and then tick marks. The evidence that is stated to be against the present applicant apart from oral evidence is under Section 27 of the Indian Evidence Act, whereby he has discovered the place, his clothes etc. The place was already shown by the informant. In the FIR, she has not stated that she was taken from backside door of the said house. She rather says that the applicant took by holding her hand to the house of third person which was opposite to the house of the informant. After she went inside, she found that there is nobody inside the house and immediately then she said to the applicant that by giving false promise why he has brought her there and let her go. But then she says that she was threatened. However, the spot which was

shown by her to the Panchas, the front door was locked, back door was open and she was taken from backside. Now, it would be the endeavour for the trial Court as to how to appreciate this contradiction. Now, spot Panchanama also does not state that when all of them went there what was the position of the said door at the backside. At one or two places, it is stated that the said house was in dilapidated condition but that does not appear to be the situation. There is difference between the dilapidated structure and the structure which is not in use.

8. The glaring fact that is appearing from the contents of the FIR and the statements of the witnesses including the paternal uncle, father of the informant, that immediately after the incident, the informant had disclosed the said fact to the paternal uncle. The paternal uncle says that he had then informed the said fact on phone to the father of the informant. The father of the informant returned on the next day morning and the victim again apprised the entire happening to her father, still he has not went to lodge the report and not taken the informant to lodge the report. In the FIR, it is further stated that the father had gone to ask the applicant about the incident and at that time, the parents of the applicant, brother, sister etc. threatened them that they should not disclose the said fact to anybody otherwise

entire family would be killed. It was also told by the mother of the present applicant that if the girl becomes pregnant then they would bear the expenses of the delivery. Thereafter also, the father of the informant told that he would lodge the report against them with the Police and then the applicant and others told that even if he files complaint to the Police, they are not afraid of and they would see how he lodges report. The fact is that how many days that fear would be there in the mind of the father or even in the mind of the informant. What were the activities of the informant, her father and her family members as well as of the applicant and his family members from 27th September, 2021 to 28th October, 2021 have not been stated by anybody. Merely by making the statement that they were in fear and therefore, had not lodged the report, cannot convince the Court of law. The intensity for which that threat has been given that matters. Further the informant says that since she had intention to lodge the report, she is lodging the report. After keeping mum for so many days, it is un-digestable that all of sudden, she feels that she would lodge the report. This fact can also be seen from another angle. Though, the paternal uncle and father of the informant were having the knowledge about commission of offence (they are the persons governed under Section 19 of the POCSO Act) had not reported the same and

therefore, prima-facie it can be opined that offence under Section 21 of the POCSO Act is made out against them. Now, they cannot resist the bail application contending that offence is serious. In fact, offence was serious at the time it was allegedly disclosed to them also but no action was taken by them. Therefore, with this kind of evidence, the applicant need not be asked to remain in jail. He deserves to be released on bail. Hence, the following order is passed :-

ORDER

- i) Bail Application stands allowed.
- ii) The Applicant - Arjun Dipak Pardeshi be released on bail in connection with Crime No.0903 of 2021, registered with Rahuri Police Station, Dist. Ahmednagar, for the offence punishable under Sections 376, 377, 323, 506 read with Section 34 of the IPC and under Sections 3 and 4 of the POCSO Act, on P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rs. Twenty-five Thousand only) each.
- iii) The applicant shall not enter the jurisdiction of village Satral, Taluka-Rahuri District-Ahmednagar till the conclusion of the trial. He should reside elsewhere and before submission of bail papers, the applicant should give complete address of his proposed residence with his Mobile Number to the Investigating Officer as well as the trial Court.

iv) The applicant shall comply with the requirements set out in Para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v) The applicant shall not indulge in any criminal activity and shall tamper with the prosecution evidence in any manner.

vi) Bail before the trial Court.

vii) The fees of the appointed Advocate is quantified @ Rs.5,000/-. It is to be paid through the High Court Legal Service Sub-Committee, Aurangabad.

viii) It is clarified that the observations made in this 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.

**(SMT. VIBHA KANKANWADI)
JUDGE**