

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

BAIL APPLICATION NO.653 OF 2022

Kiran Santosh Tayade

... APPLICANT

VERSUS

The State of Maharashtra & anr.

... RESPONDENTS

.....
Mr. H.P. Randhir, Advocate for applicant
Mr. G.O. Wattamwar, A.P.P. for respondent No.1 – State
Mr. D.R. Dhumal, Advocate for respondent No.2
.....

CORAM : R. G. AVACHAT, J.

DATE : 20th JULY, 2022.

PER COURT :

This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.17/2022, registered at Faizpur Police Station, District Jalgaon for the offence punishable under Sections 377, 506 of the Indian Penal Code and Sections 3, 3(A), 4, 5(M) and 6 of the Protection of Children from Sexual Offences Act. The F.I.R. has been lodged by grandmother of the victim on 25/1/2022. It is alleged therein that, the applicant herein resides in the neighbourhood of the informant. On 19/1/2022 by 2.00 p.m.,

the grandson of the informant related her that the applicant took him to a nearby forest area and sodomized him. The grandmother did have a look at anus of the victim. She, however, did not notice anything abnormal. She took the victim to a hospital for treatment of fever. It is only after 6 days of the alleged incident the F.I.R. was lodged.

2. The learned counsel for the applicant would submit that, the applicant is 19 years of age. The medical report rules out the offence of sodomy. He relies on Modi's Medical Jurisprudence and Toxicology (Twenty Second Edition) and submits that, on examination of the passive agent (boy), if the boy is not accustomed to sodomy, abrasions on the skin near the anus may be discovered with pain in walking and on defaecation. According to him, the applicant is 19 years of age. He, therefore, urged for grant of bail.

3. The learned A.P.P. and the learned counsel representing the respondent, on the other hand, strongly opposed for grant of bail. According to them, the offence is serious one. It was but natural for the grandmother not to disclose the offence at the earliest. They would further submit that, the trial Court may be directed to conclude the trial within a time-frame since it is not a case of more than 4

– 5 witnesses.

4. Considered the submissions advanced. Perused the F.I.R. and the related papers. The applicant is 19 years of age. He is alleged to have sodomized an eight year old boy. From the F.I.R., it appears that, the victim has related the incident to his grandmother the same day. It is not known as to why the F.I.R. was filed 6 days thereafter. On the very day the victim was taken to the hospital for treatment of fever. While the informant had seen anal part of the victim, she did not notice bleeding nor swelling although the victim complained of pain. The medical examination report does not support the prosecution case. It is not that no incident as alleged has taken place. It might be a case of an attempt.

5. Since the applicant is 19 years of age and the F.I.R. has been lodged 6 days after the alleged incident, and the medical evidence does not reinforce the prosecution case, I am inclined to grant bail to the applicant. Hence the order :-

ORDER

(i) The Bail Application is allowed.

(ii) The applicant be released on bail in connection with Crime No.17/2022, registered at Faizpur Police Station, District Jalgaon for the offence punishable under Sections 377, 506 of the Indian Penal Code and Sections 3, 3(A), 4, 5(M) and 6 of the Protection of Children from Sexual Offences Act. on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence. The applicant shall not enter the village Kosgaon, Taluka Yawal, District Jalgaon till conclusion of the trial.

**(R. G. AVACHAT)
JUDGE**

fmp/-