

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

BAIL APPLICATION NO. 1498 OF 2021

Gorakshnath @ Samadhan S/o Navnath Pagar

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) X Y Z

...RESPONDENTS

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Mr.B.R. Kedar Advocate for Applicant.

Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent No.1-State.

Mr.B.S. Doifode Advocate for Respondent No.2.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 23rd DECEMBER 2021

DATE OF PRONOUNCING ORDER : 5th JANUARY 2022

ORDER :

1. Present applicant has been arrayed as accused No.2 in Crime No.30 of 2021 registered with Chopda Police Station, District-Jalgaon for the offences punishable under Sections 366 [A], 368, 376 [1] [A], 354 [D], 34 of the Indian Penal Code

and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act and under Sections 3 [1] [W] [I] [II], 3 [2] [V-A] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Heard learned Advocate for the applicant, learned APP for respondent No.1 State and learned Advocate for Respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that if we peruse the First Information Report, then it can be seen that it was given by the father of the minor victim under Section 363 of the Indian Penal Code against unknown person. Thereafter, as per the prosecution story, the girl could be found on 17th March 2021 to the family members. However, her statement was recorded on 21st March 2021 and thereafter the names of three accused persons could be revealed from her statement under Section 161 of the Code of Criminal Procedure. Perusal of her statement would show that the girl was in love with accused No.1 and as per the allegations, with the help of accused No.3 she left the custody of her guardian and went by bus from Chopda to Malegaon. At Malegaon when she had

contacted accused No.1, he refused to come there for picking her up and then when the victim contacted accused No.3, she told that victim will have to go along-with applicant – accused No.2 and accordingly she went with accused No.2 to Pangri, Taluka-Sinnar, District-Nashik. According to the victim, she was ravished by the applicant by confining her at a place and by giving threats he used to commit sexual intercourse with her. On 17th March 2021 applicant had forgotten to latch the door from outside and therefore she came out and the applicant had also forgotten the Mobile phone, therefore, she contacted her brother who had then made arrangements to take the victim to Rundati, Taluka-Amalner. From there she was taken to Chopda on 18th March 2021. Her mental condition was not proper and therefore, she could not give the statement earlier but it was then recorded on 21st March 2021. Except her bare statement, there is no evidence against the present applicant. The investigation is complete and charge-sheet is filed. The medical certificate cannot be said to be in favour of the prosecution as there were no signs of any mark on her person. Further, the final opinion is awaited for forensic laboratory reports. If the charge-sheet is perused, there is no documentary evidence to show that the girl was minor on the date of alleged offence as the proof regarding

her age appears to have not been collected. The statements of the witnesses, who are mainly the family members of the victim, would show that they were giving the hear-say account. Therefore, with this kind of evidence the applicant need not be kept in jail. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and contended that though the age proof appears to have not been attached to the charge-sheet, yet the copy of the school leaving certificate is available with the police papers and it would indicate that the date of birth of the victim was 27th October 2003. Therefore, on the date of the offence the victim was 17 years 4 months and 23 days old. She has narrated what had happened with her and in fact accused No.1 had instigated her to come out and by giving promise to marry it appears that the trap was laid for her. In between the accused No.3 got introduced and she had also instigated the victim. The present applicant was sent to fetch the victim from Malegaon. Instead of sending her back by confining her, threatening her he has exploited her sexually. The evidence that has been collected is sufficient to prove the guilt of the applicant and therefore he does not deserve any sympathy for the serious offence.

5. Learned Advocate appearing for respondent No.2, on the basis of affidavit-in-reply filed by respondent No.2, strongly opposed the application. In the said affidavit, respondent No.2 has reiterated same story that was stated by him in his First Information Report as well as the supplementary statement and the statement of the victim. Learned Advocate for respondent No.2 submitted that when strong evidence is collected against the present applicant and the offence that has been committed is heinous in nature, he does not deserve sympathy.

6. At the outset, it can be seen that the investigation is over and charge-sheet is filed. Under such circumstance, we can presume that the physical custody of the applicant is not required for the purpose of investigation. When the charge-sheet is filed, we required to consider what material has been collected against the present applicant. Since the contents of the statement of the victim are already reproduced they need not be considered once again. We required to consider the role that has been alleged against the present applicant. At this stage, except the words of the victim there appears to be nothing. Though from the school leaving certificate it can be said that on the date

of alleged offence the girl was minor, yet it can be seen that prior to victim coming down to Malegaon she had not even seen nor was in contact with the present applicant. The investigation, as it appears from the charge-sheet, appears to be leaving lacunas as we can see that after the statement of the girl was recorded on 21st March 2021 there is no attempt by the investigating officer to conduct the spot panchnama of the place where the girl was confined and the place at which she was allegedly ravished. Whether that place was surrounded by residence of people is also not made known nor statements of neighbours to that house/ premises have been recorded.

7. As per the statement of victim, she went with present applicant on 24th January 2021 and could rescue herself on 17th March 2021. What was her daily routine or how she could manage her affairs during this period has not been given by her. But, then she says that on 17th March 2021 she took advantage of the fact that applicant had forgotten to latch the door from outside and also left the Mobile phone in the house, she could contact her brother. Except brother's statement there is nothing to support her. Though it appears that the correspondence is made to get the CDR of the Mobile phones, yet they have not

been attached to the charge-sheet. At the cost of repetition, it can be said that the statements of the neighbours at Pangri and the spot panchnama there has not been recorded. As regards the medical certificate is concerned, definitely the medical examination has been done after a long gap. In her statement the victim has not stated as to when the last act was done by the applicant with her. This could have then helped the medical officer to assess the physical condition of the victim. Another fact to be noted is that though on 17th March 2021 the brother was contacted by the victim, yet the brother has not contacted the police and without the police intervention, it appears that the girl was fetched from Pangri bus stand.

8. Under such circumstance, with this kind of evidence the applicant need not be kept in jail. He deserves to be released on bail, however, with stringent conditions. Hence the following order:-

ORDER

- i) The Application stands allowed.
- ii) The applicant - Gorakshnath @ Samadhan S/o Navnath Pagar be released on bail in connection

with Crime No.30 of 2021 registered with Chopda Police Station, District-Jalgaon for the offences punishable under Sections 366 [A], 368, 376 [1] [A], 354 [D], 34 of the Indian Penal Code and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act and under Sections 3 [1] [W] [I] [II], 3 [2] [V-A] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) The applicant shall not enter the jurisdiction of Taluka Chopda, District-Jalgaon for any reason till the conclusion of the trial.

iv) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

v) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI , J.]