

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

912 BAIL APPLICATION NO.972 OF 2021

**MADHAV @ R.K. S/O. NAMDEV YEREWAD
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Kedar Ganesh L
APP for Respondents/State : Mrs. R.P. Gour
Advocate for R/2 : Mrs. Ashlesha Kulkarni (Appointed)

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**CORAM : M.G. SEWLIKAR, J.
DATE : 20th January, 2022**

PC.:-

This is an application under Section 439 of the Cr.PC. for enlargement of applicant on bail in connection with Crime No.840/2020 under Section 363, 366(A), 342, 354, 354(A), 376(D) read with Section 34 of the I.P.C. and under Section 4, 6, 8, 12 and 17 of the POCSO Act registered with Nanded Rural Police Station, District Nanded.

2. Informant is the maternal uncle of the victim. On 8th December, 2020, victim had left the house in anger. On 9th December, 2020 she came back. On interrogation victim stated that she had left the house in anger on 8th December, 2020 and had gone to Kaleshwar Temple. She called up R.K. i.e. the present applicant at the Kaleshwar Temple. Thereafter, applicant and his

two friends by the name of Aniket and Namdev came there in white car. They took her to village Narsi. Thereafter she was taken to a room. She further stated that a boy by the name of Namdev committed rape on her, thereafter applicant committed rape on her and after that Aniket committed rape on her. On the next day she was given Rs.300/- by Aniket. She came back to the place of informant. She has given the statement on 12th December, 2020. In her supplementary statement on 15th December, 2020 she absolved accused-Namdev of penetrative sexual assault. But remained consistent so far as the role of applicant and accused-Aniket is concerned. In her statement recorded under Section 164 of the Cr.P.C. she did not allege penetrative sexual assault by Aniket but alleged penetrative sexual assault by applicant and accused-Namdev. In the history recorded by the Medical Officer, she did not implicate accused-Namdev but implicated applicant and accused-Aniket. On these allegations crime came to be lodged under the aforesaid sections.

3. I have heard Shri Kedar learned counsel for the applicant, Smt. Gour learned APP for the State and Smt. Kulkarni learned counsel for the respondent no.2.

4. Learned counsel Shri Kedar submits that there is no evidence of penetrative sexual assault. Except her bare statement. Medical evidence does not corroborate story of the informant. He further submits that informant has

been consistently changing her stand. Applicant is behind the bars since 13th December, 2020.

5. Smt. Gour and Smt. Kulkarni submit that medical evidence shows that there was injury to hymen but hymen was intact. They further submit that Medical Officer has ruled out penetrative sexual assault but has opined that non penetrative sexual assault cannot be ruled out. They, therefore, prayed for rejection of the application.

6. Charge-sheet is filed. Initially, informant alleged that accused-Namdev had penetrative sexual assault. Thereafter, she absolved accused-Namdev of penetrative sexual assault but implicated applicant and accused-Aniket. She further absolved accused-Namdev while recording medical history. In statement under Section 164 of the Cr.PC. also she deposed to the same effect. Therefore, victim is not consistent in her version.

7. So far as medical evidence is concerned, it does not corroborate the story of the victim. Her hymen was intact though there was injury to hymen. There was no injury to libia majora and libia manora. Medical Officer has opined that there is no evidence of penetrative sexual assault but possibility of non penetrative sexual assault cannot be ruled out. Non penetrative sexual assault is dealt with by Section 7 of the POCSO Act which is

punishable with minimum imprisonment of three years which can be extended up to five years. Applicant is behind the bars since 13th December, 2020. Considering the period of detention and considering the evidence collected by the prosecution, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.15,000/- with one solvent surety in the like amount, in connection with Crime No.840 of 2020 under Section 363, 366(A), 342, 354, 354(A), 376(D) read with Section 34 of the I.P.C. and under Section 4, 6, 8, 12 and 17 of the POCSO Act with Nanded Rural Police Station, District Nanded on condition that she shall not tamper the prosecution evidence.
- III) Fees of the appointed counsel is quantified @ Rs.5,000/- and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.
- IV) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]