

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1074 OF 2021

Baurya @ Bhura s/o Lotan More (Naik)

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. C.C. Deshpande, Advocate for the applicant.

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

Mrs. Pratibha Suryawanshi, Advocate (appointed) for respondent No. 2.

CORAM : M.G. Sewlikar, J.

DATE : 19th JANUARY, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 07/2019 registered with Nardana Police Station, Dist. Dhule, for the offences punishable under Sections 376(3), 323, 504, 506 of the Indian Penal Code and under Sections 5(l)(n) and 6 of Protection of Children from Sexual Offences Act.

2. Facts leading to this application are that applicant is the cousin of the victim (son of mother's sister). First Information Report came to be lodged on 10th January, 2019. Father of the victim had sent the victim to her maternal aunt (mother's sister) about four

months before the incident. About one month before lodging of First Information Report, applicant had forceful penetrative sexual assault. Since then, applicant had penetrative sexual assault with the victim. The victim had gone with her parents at Rahuri for sugarcane cutting. Applicant had come there also and had threatened the victim not to disclose anything about the penetrative sexual assault.

3. As per the narration in the First Information Report, on 8th January, 2019, father of the victim had come to take her back when she was at Amalner. On 9th January, 2019, at 10.00 pm, applicant came to the victim, threatened her parents and physically assaulted them. On these allegations, First Information Report came to be lodged on 10th January, 2019 for the aforesaid offences.

4. Heard Shri Deshpande, learned counsel for the applicant, Shri Wattamwar, learned APP for the State and Mrs. Suryawanshi, learned counsel (appointed) for respondent No. 2.

5. Learned counsel Shri Deshpande submits that there is no proof about the age of the victim. He submits that there was love affair between the victim and the applicant. Applicant is behind the

bars since 15th January, 2019. Charge is still not framed. He, therefore, seeks release of the applicant on bail.

6. Learned APP Shri Wattamwar and learned counsel Mrs. Suryawanshi submit that there is no evidence of love affair between the applicant and the victim. They submit that the alleged penetrative sexual assault was without the consent of the victim and against her will. They submit that age of the applicant, as per ossification test, is 17 $\pm$ 1. They submit that at the time of the incident, the victim was minor. Therefore, her consent is not a consent in the eyes of law. Learned APP further submits that till the evidence of the victim is over, the applicant may not be released on bail.

7. Charge-sheet is filed. Ossification test is conducted after filing of the charge-sheet. There is no documentary evidence about the age of the victim. Therefore, there is no evidence to indicate that the victim was minor at the time of the incident. In addition to this, applicant is behind the bars since last more than three years. Charge is still not framed. Therefore, liberty of the applicant cannot be curtailed indefinitely. In this view of the matter, I am

inclined to release the applicant on bail on stringent conditions.
Hence the following order :

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.20,000/- (Rs. Twenty Thousand) with one solvent surety in the like amount in connection with Crime No. 07/2019 registered with Nardana Police Station, Dist. Dhule, for the offences punishable under Sections 376(3), 323, 504, 506 of the Indian Penal Code and under Sections 5(l)(n) and 6 of Protection of Children from Sexual Offences Act, on condition that he shall not enter Taluka Amalner and shall not keep any contact with the victim till conclusion of the trial.
- iii) Fees of the appointed counsel is quantified at Rs.5,000/-.
- iv) Application is disposed of.

(M. G. SEWLIKAR)
Judge