

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1109 OF 2021

Rajendra S/o Namdev Kandalkar

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. M. A. Dond, Advocate for the applicant.

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

Mr. R. K. Khandelwal, Advocate (appointed) for respondent No. 2.

CORAM : M.G. Sewlikar, J.

DATE : 25th MARCH, 2022.

PER COURT :

1. By this application, applicant is seeking his release on bail in connection with Crime No. 257/2021 registered with Sangamner Taluka Police Station, Dist. Ahmednagar, for the offences punishable under Sections 376(3), 376(2)(n), 506 , 354 of the Indian Penal Code and under Sections 4, 5(l), 5(j)(2) and 6 of Protection of Children from Sexual Offences Act.

2. It is the case of the prosecution that the applicant is the distant paternal uncle of the victim. It is alleged in the First

Information Report by the victim that about one year before the incident, the applicant had penetrative sexual assault on the victim. He repeated this act in the night of Holi festival. On 8th June, 2021, the victim was taken to the hospital where she was diagnosed to be pregnant of six months. Accordingly, First Information Report came to be registered against the applicant on the basis of which, offence as aforesaid came to be registered against him.

3. Learned APP Shri Wattamwar and learned counsel Shri Khandelwal submit that the statement of victim under Section 164 of the Code of Criminal Procedure is consistent with the First Information Report. They submit that applicant being a distant uncle of the victim, though married, took undue advantage of the minority of victim and established physical relations with her. They submit that even if DNA report is against the prosecution, there is other evidence on record to connect the applicant with the offence. They, therefore, pray for rejection of the application.

4. DNA report is submitted. It shows that applicant is excluded to be the biological father of the child of the victim. What will be the evidenciary value of the other evidence on record is a

matter to be considered during trial. At this stage, since DNA report has excluded the applicant to be the biological father of the child of the victim, the applicant is entitled to be released on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 15,000/- (Rs.Fifteen Thousand) with one solvent surety in the like amount in connection with Crime No. 257/2021 registered with Sangamner Taluka Police Station, Dist. Ahmednagar, for the offences punishable under Sections 376(3), 376(2)(N), 506, 354 of the Indian Penal Code and under Sections 4, 5(L), 5(J)(2) and 6 of Protection of Children from Sexual Offences Act, on condition that he shall not tamper with the prosecution evidence and shall not keep any contact with the victim.
- iii) Application is disposed of.
- iv) It is clarified that the observations made in the above 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.

(M. G. SEWLIKAR)
Judge