

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

919 BAIL APPLICATION NO.1149 OF 2021

LAHU DATTARAO KENDRE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Murkute J.M.
APP for Respondents/State : Mr. A.V. Deshmukh
Advocate for R/2 : Mr. Shinde Sanket S. (Appointed)

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CORAM : M.G. SEWLIKAR, J.
DATE : 13th January, 2022

PC.:-

This is an application under Section 439 of the Cr.PC. for releasing the applicant on bail in connection with Crime No.78/2021 registered with Sonpeth Police Station, District Parbhani under Section 376(f), 363 read with Section 34 of the I.P.C. and under Section 4, 8 of the POCSO Act.

2. Case of the prosecution is that on the date of the offence i.e. on 2nd April, 2021 victim was minor. Informant is the father of the victim. On 16th April, 2021, victim and mother of the victim were sleeping in the shed. On 17th April, 2021 at about 4.00 am victim was not being seen there. Father of the victim searched for her. When she was not found, he lodged the FIR in

the police station. During investigation it was revealed that applicant had sexual intercourse with the victim who was 16 years and 6 months of age at the time of the incident. Accordingly, offence came to be registered against the applicant.

3. I have heard learned counsel for the applicant Shri Murkute, Shri Deshmukh learned APP for the State and Shri Shinde learned counsel for the respondent no.2-informant.

4. Shri Murkute submits that statement of the victim came to be recorded on 23rd April, 2021. Name of the applicant does not figure in the said statement. He further submitted that the name of the applicant surfaced only in the statement dated 26th April, 2021. He submits that this is nothing but an improvement.

5. Learned APP Shri Deshmukh and Shri Shinde submit that during investigation name of the applicant surfaced. She has given detailed account of the incident. Therefore, he may not be released on bail.

6. Charge-sheet is filed. On perusal of the statement dated 23rd April, 2021 of the victim, it can be made out that name of the applicant does not appear in this statement. The first incident of sexual assault on the victim appears to be on 16th April, 2021. In this statement all the allegations are

made against Naresh Chaure and Anuja Jaybhaye. There is no whisper in this statement against the applicant. No explanation is forthcoming as to why his name did not figure in the statement dated 23rd April, 2021.

7. It appears that name of the applicant surfaced in the statement dated 26th April, 2021. In this statement she has narrated the incident prior to 2nd April, 2021 and in this statement she alleged that applicant also sexually assaulted her. As per the statement, there was penetrative sexual assault on the part of the applicant on the victim. These allegations do not find place in the statement date 23rd April, 2021. Considering these two diagonally opposite versions, I am inclined to release the applicant on bail. Applicant is 25 years of age and has no criminal antecedents. He is not likely to flee from justice. In this view of the matter, 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.78 of 2021 under Section 376 (f), 363 read with Section 34 of the I.P.C. and under Section 4, 8 of the POCSO Act with Sonpeth Police Station, District Parbhani on condition that he 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.]