

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

912 BAIL APPLICATION NO.1170 OF 2021

**YOGESH @ VISHAL DEVCHAND MAHER
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

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Advocate for Applicants : Mr. Deshpande Chaitanya C.
APP for Respondents/State : Mr. V.S. Badakh
Advocate for R/2 : Mr. Z. H. Farooqui (Appointed)

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**CORAM : M.G. SEWLIKAR, J.
DATE : 10th February, 2022**

PC.:-

Heard.

2. The victim is the daughter of the informant. On 22nd March, 2021 at 6.30 am, informant found that the victim was missing. He was informed by Ganesh Gusinge and Trimbaksingh Jarwal that applicant had kidnapped the victim. During investigation it transpired that applicant had taken the victim on his motorcycle to Aurangabad and thereafter to Karmad. It also transpired that applicant had penetrative sexual assault with the victim. Applicant was apprehended and brought to the police station. On these allegations FIR came to be lodged under Section 363, 376(2)(i) read with Section 34 of the I.P.C. and under Section 4, 6, 8 and 12 of the POCSO Act vide Crime No. 108/2021 registered with Vaijapur Police Station, District Aurangabad.

3. Learned counsel for the applicant Shri Deshpande submits that charge-sheet is filed. Applicant is just 20 years of age. He submits that medical evidence does not support the theory of penetrative sexual assault. He submits that if applicant is released on bail he will stay out of the Taluka itself.

4. Learned APP Shri Badakh and Shri Farooqui learned *amicus curiae* submit that age of the victim is 13 years. Therefore, she was not competent to give consent for physical relations. They submit that her statement recorded under Section 164 of the Cr.P.C. and supplementary statement recorded under 161 of the Cr.P.C. clearly show that one of the police officers had advised her to wash her under garments so that applicant will not receive severe punishment. They submit that applicant belongs to the village Sanjarpurwadi in which the victim is staying. If applicant is released on bail, he will tamper the prosecution evidence and again will meet the victim.

5. Charge-sheet is filed. Admittedly, age of the victim is 13 years and age of the applicant is 20 years. On perusal of medical examination report of the victim, it is seen that there was no injury to hymen and there is no evidence of penetrative sexual assault on the victim. On one hand prosecution comes with a story that victim was advised to wash her under garments so as to destroy the evidence obtaining thereon and on the other

hand the letter addressed to the Chemical Analyser shows that there were stains on the under garments of the victim. These two things do not go together. Having regard to the medical examination report, I am inclined to release the applicant on bail. To allay the fear of the prosecution stringent conditions will be imposed while releasing the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.108/2021 under Section 363, 376(2)(i) read with Section 34 of the I.P.C. and under Section 4, 6, 8 and 12 of the POCSO Act with Vaijapur Police Station, District Aurangabad on condition that he shall not keep any contact with the victim not even through social media and he shall not enter Taluka Vaijapur till the conclusion of the trial.
- III) 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.
- IV) 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.

[M.G. SEWLIKAR, J.]