

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1645 OF 2022

KAMAJI @ PAVAN KISHAN UBALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Abhinay D. Khot
APP for Respondent No.1 : Mrs. V. S. Choudhari
Advocate for Respondent No.2 : Mrs. Surekha G. Chincholkar
...

CORAM : S. G. MEHARE, J.

DATE : 11-10-2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent No.1/State and the learned counsel for the victim/respondent No.2.
2. A crime has been registered by Kurunda Police Station, Taluka Aundha Nagnath, District Hingoli, for the offences punishable under Sections 363, 376(2)(n), 366A, 323, 506 of the Indian Penal Code and Sections 4, 8, 12, 17 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.
3. As far as the case against the applicant is that the victim in her supplementary statement alleged that the applicant paid something to the main accused and said him to take money and enjoy, if he would require more, he would pay him on phone pay. Except this, there were no allegations against the applicant.

4. The learned counsel for the applicant would submit that this is an afterthought story of the victim and her parents. He never paid anything to main accused. However, due to misunderstanding the false allegations have been levelled against him. After arrest he was produced before the learned Magistrate, but did not ask for his police custody. He is behind the bar from 08.09.2022. The police did not recover anything from the applicant. Except the bare statement of the victim that too in her supplementary statement, there is nothing against the applicant. The applicant is the counter boy in a medical shop. He had no capacity to pay Rs.10,000/- to anybody at that time. Hence, he may be released on bail.

5. The learned A.P.P. would submit that the offence is serious. The applicant instigated, aided and facilitated the main accused to commit the serious crime under the POCSO Act. The serious allegations have been levelled against the applicant. Hence, he is not entitled to bail.

6. The learned counsel for the victim/respondent No.2 has referred to Section 16 of the POCSO Act and would argue that abetment of an offence under the POCSO Act is punishable with imprisonment provided for the offence committed. Referring to explanation II of Section 16 of the POCSO Act, she would argue that doing anything in order to facilitate the commission of any

offence, either prior to or at the time of commission of an act, that is said to aid the doing of that act. She would vehemently argue that at the time of commission of offence the applicant facilitated and aided the main accused by providing money to him. The words uttered by him, "that take the money and enjoy and if more money is required, he would pay", is the evidence of having knowledge that main accused was going to commit a serious offence. Therefore, he may not be granted bail.

7. The first statement of the victim under Section 161 of the Code of Criminal Procedure on 21.08.2022. Her statement is silent about the allegations against the applicant. However, on 07.09.2022 in her supplementary statement, she alleged, as above, against the applicant. The supplementary statement creates doubt. The police have made inquiry with the applicant and nothing is remained to be investigated against him. Considering the role attributed to him, it would not be appropriate to keep the applicant behind the bar. The applicant deserve bail. Hence, the following order :-

- i) The application is allowed.
- ii) The applicant Kamaji @ Pavan s/o. Kishan Ubale be released on bail, on furnishing PB and SB of Rs.20,000/-, with one solvent surety of the like amount, in C.R.No.182 of 2022 registered with Kurunda Police Station, for the offence punishable under Sections

363, 376(2)(n), 366A, 323, 506 of the Indian Penal Code and Sections 4, 8, 12, 17 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, on the conditions that (i) not to contact the victim or her relatives in any other way or mode, and (ii) He shall not tamper with the prosecution witnesses.

(S. G. MEHARE)
JUDGE

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