

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

43 BAIL APPLICATION NO.1460 OF 2021

1. Gorakhnath s/o Vitthal Thorat
2. Ankush s/o Vitthal Thorat
3. Sachin s/o Vitthal Thorat

VERSUS

The State of Maharashtra and another.

...

Advocate for Applicants : Mr. Magar Balasaheb N.

APP for Respondents : Mr. S B Narwade

Advocate for Respondent 2 : Mr. S.G. Shinde
(appointed)

...

AND

BA NO.1634 OF 2021

1. Laxmi d/o Gajanan Gaikwad
2. Laxman s/o Gajanan Gaikwad

versus

The State of Maharashtra and another.

...

Advocate for Applicants : Mr. C.C.Deshpande h/f
D.M.Shinde

APP for Respondents : Mr. S B Narwade

Advocate for Respondent 2 : Mr. S.G. Shinde
(appointed)

...

AND

BA NO.1555 OF 2021

Datta s/o Sambhaji Kadam

Versus

The State of Maharashtra and others.

...

...

Advocate for Applicants : Mr. R.S.Deshmukh Sr. Counsel
a/w Vishal Chavan and S.A.Jadhav i/b Mr. Devang R.
Deshmukh

APP for Respondents : Mr. S B Narwade
Advocate for Respondent 2 : Mr. S.G. Shinde
(appointed)

...

AND

BA NO.1635 OF 2021

Pappu @ Maroti Suryakant Bhalerao
Versus
The State of Maharashtra and another.

...

Advocate for Applicants : Mr. C.C.Deshpande h/f
D.M.Shinde

APP for Respondents : Mr. S B Narwade
Advocate for Respondent 2 : Mr. S.G. Shinde
(appointed)

...

AND

BA NO.1554 OF 2021

1. Ravi Suresh Bhalerao
2. Ram s/o Datta (Dattarao) Kshirsagar
3. Anand s/o Umakant Awate
versus
The State of Mahraashtra and others.

...

Advocate for Applicants : Mr. R.S.Deshmukh Sr. Counsel
a/w Vishal Chavan and S.A.Jadhav i/b Mr. Devang R.
Deshmukh

APP for Respondents : Mr. S B Narwade
Advocate for Respondent 2 : Mr. S.G. Shinde
(appointed)

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CORAM : SARANG V. KOTWAL, J.
Dated : June 06, 2022
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PER COURT :-

1. All these applications are decided by this common order because they arise out of the same registered offence and the same investigation. Wherever necessary, the applicants are referred to by their names.

2. The applicants are seeking bail in connection with C.R.No.155 of 2021 registered at Basmath Gramin Police Station, District Hingoli on 10.7.2021 under section 376 (2)(n) of the Indian Penal Code, u/s 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act) and under section 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SCST Act). The applicant Pappu @ Maroti Suryakant Bhalerao was arrested on 10.7.2021. The applicant Ravi Suresh Bhalerao was arrested on 21.7.2021. All other applicants were arrested on 20th July, 2021. Since then, they are in custody. Investigation is over and the

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charge-sheet is already filed. One accused namely Abdul Raheem @ Hazi s/o Abdul Sajid Bagwan was granted anticipatory bail by this Court (Coram : Smt. Vibha Kankanwadi, J.) vide order dated 31.01.2022 in ABA No.1423 of 2021. This order is important in the context of the case because except the applicant Pappu @ Maroti Suryakant Bhalerao, all other applicants are claiming parity in appreciating the material against the applicants.

3. Heard Mr. B.N.Magar, learned counsel for the applicant in bail application no.1460 of 2021, learned Senior Counsel Mr. R.S.Deshmukh a/w Vishal Chavan and S.A.Jadhav i/b Mr. Devang R. Deshmukh in bail application No.1554 of 2021 and 1555 of 2021, Mr. C.C.Deshpande, learned counsel in bail application no.1634 of 2021 and 1635 of 2021. I have also heard Mr. S.B.Narwade, learned APP for the respondent-State and learned counsel Mr. S.G.Shinde appointed for respondent no.2 in all these bail applications.

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4. FIR is lodged by the prosecutrix herself. FIR is lodged on 10.7.2021. At the time of lodging of the FIR, she was 18 years and one month old. Period of offence is alleged to be from May, 2020 till February, 2021. Therefore, according to the prosecution case, during that period, she was minor and, therefore, the provisions of POCSO Act are also applicable. Besides these provisions, provisions of the SCST Act are also applied.

5. The informant has stated that, in the month of April, 2021, she was married to her husband, but in June, 2021 it was revealed through medical examination that she was already pregnant for more than 19 weeks. Her husband naturally got suspicious as the marriage had taken place shortly before that medical examination. The informant therefore was left by him to her parents house. Parents inquired with her. The informant has stated in the F.I.R. that she had got acquainted with the applicant Pappu @ Maroti. They had developed love affair. The applicant Pappu @ Maroti

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promised to marry her. The F.I.R. mentions instances when they had physical relations. In February 2021 itself, the informant realized that she had become pregnant. She got scared and did not tell this fact to anybody. When she informed this fact to the applicant Pappu @ Marot; he avoided the topic of marriage. He flatly refused to marry with her. He also said that she was from a lower caste and he did not want to marry her. On these basis the first informant lodged her F.I.R. with the police station in presence of her mother and in presence of lady police officer Smt. Patil.

6. Subsequently, her supplementary statement was recorded on 19.7.2021. This statement implicates all the other applicants besides Pappu @ Maroti. She has changed her story in the supplementary statement though she maintained the same narration against the applicant Pappu @ Maroti. She has stated that in the year 2020, the applicant Laxmi introduced her to many people from the village Kanhergaon and encouraged her to have physical relations initially, with the applicant

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Ravi Bhalerao. Then she was forced to have physical relations with the other accused under threat of disclosure of her relation with Ravi. There is a general statement naming each of the applicants, that, during that period, the informant was forced to have physical relations with each of the other applicants in Laxmi's house. According to the informant, she did not inform this to anybody else because of the fear. In the supplementary statement, there is a separate allegation against the applicant Datta that physical relations were allegedly kept by him at a different place. Even, this fact was not told by her to anyone else. Significantly, she has also narrated the incident wherein aforementioned accused Abdul Raheem @ Hazi s/o Abdul Sajid Bagwan had established forcible physical relations with her. Importantly, this particular accused is granted anticipatory bail as mentioned earlier.

7. Informant's statement under section 164 of Cr.P.C. was recorded on 20.7.2021, wherein, she has narrated

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the incident similar to what she has narrated in her supplementary statement before the police.

8. During the medical examination conducted on 11.7.2021, she had given medical history and at that time she had named only applicant Pappu @ Maroti.

9. Learned counsel appearing for the applicant/s submitted that the applicants are implicated because of local political rivalry. They heavily relied on the order dated 31.1.2022 granting anticipatory bail to other accused Abdul Raheem @ Hazi s/o Abdul Sajid Bagwan. They submitted that on the principle of parity, the applicants deserve the same treatment. Aforesaid accused was granted anticipatory bail. Present applicants are in custody since July, 2021. Investigation is over and charge-sheet is filed. Coordinate bench of this Court has made observations wherein the informant's version is doubted and, therefore, benefit at this stage should be extended to the applicants for consideration of bail. Learned counsel for the applicant Pappu @ Maroti submitted that, as per her own case it

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was a consensual relationship and there is nothing to show that she was a minor at that time.

10. Learned APP as well as the learned counsel for respondent no.2 vehemently opposed these applications. They submitted that there is presumption under the POCSO Act that runs against the applicants under section 29. They submitted that her versions in the supplementary statement dated 19.7.2021 as well as in her statement under section 164 of Cr.P.C. are consistent. She has also explained that because of fear she had not named the applicants in the FIR. Learned APP produced a copy of DNA report before me, which shows that a baby was born and DNA of the informant's child matched with that of the applicant Pappu @ Maroti. Opinion mentions that informant and Pappu @ Maroti were concluded to be the biological parents of the informant's baby. Learned APP therefore submitted that there is clinching evidence against Pappu @ Maroti. He further submitted that though DNA report implicated only Pappu @ Maroti, that does not rule out the

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possibility of physical relations between other applicants and informant. He further submitted that statement of Chandrakant Kamble mentions that the applicants Anand, Pappu @ Maroti, Ankush and Ravi had boasted to him that they used to have physical relations with the informant. Learned APP also pointed out the statement of Ashok Gajbhar, which mentions that applicant Pappu @ Maroti had refused to marry the first informant.

11. I have seriously considered these submissions. At the outset, I have carefully perused the order passed by the Coordinate Bench of this Court granting anticipatory bail to co-accused Abdul Raheem @ Hazi Abdul Sajid Bagwan as mentioned earlier. In that order, in paragraph no.9 clear observation is made thus :-

“9. The respondent No.2 and her mother are now saying that name of the present applicant was not taken before the Investigating Officer as well as before the learned Magistrate. The learned Additional Sessions Judge has inferred this fact as attempt to pressurize the informant and her mother. Even if we keep aside that say; yet, the fact remains that there are different versions on the face of record in respect of the informant and the main fact is that when the

First Information Report is lodged it was only against one person. In the normal course if there would have been a settlement between the prosecutrix or informant and the accused or any such attempt would have been made, it could have been termed as attempt to tamper with the evidence of prosecution. But this is a different case, wherein the informant herself had given different versions and, therefore, merely because now the informant and her mother are saying that offence was not lodged against the present applicant, we cannot take it as an attempt to tamper with the evidence. Therefore, the applicant, in view of the above said facts and circumstances, deserves to be released on anticipatory bail. The interim protection granted earlier deserves to be confirmed. Accordingly, it is confirmed.”

12. Based on this, anticipatory bail was granted to co-accused Abdul Raheem @ Hazi. I see no reason to take a different view from these observations. FIR clearly implicated only applicant Pappu @ Maroti. He is consistently named in all the statements given by the informant. He is proved to be the biological father of the baby and therefore his involvement is more than clear. His promise to marry was false. Therefore, he does not deserve to be released on bail.

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13. As far as the other applicants are concerned, observations made in the order granting anticipatory bail to Abdul Raheem Hazi are applicable to them as well. First informant had named only applicant Pappu @ Maroti in her FIR. This FIR was lodged after her parents had made inquiry with her about her pregnancy and at that time she had narrated this incident. Thus, she had come out with her case much later from the date of the incident and after support from her parents was offered to her. In this view of the matter, there was no reason for her not to disclose names of other applicants in the F.I.R. However, this fact can be considered during the course of the trial. At this stage, nothing much can be observed on her non-disclosure of these names but at the same time there is glaring inconsistency between her F.I.R. and her other statements. It is made clear that, all these observations are made only for the purpose of deciding this application. The investigation and trial in future shall not be influenced by any of these observations. As far as Chandrakant's statement is concerned, which is

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referred to by the learned APP, it was recorded on 20.7.2021. Interestingly, on that very day all the applicants were arrested except Ravi, who was arrested on 21.7.2021. Informant's supplementary statement was already recorded on 19.7.2021 and, therefore, Chandrakant's statement will have to be considered from that angle. Chandrakant has not disclosed his knowledge immediately to any of the witnesses or to any of the police authorities which is clear from the statement of Ashok Gajbhar; again referred to by the learned APP. In this view of the matter, based on the above discussion, all the applicants except the applicant Pappu @ Maroti Suryakant Bhalerao in Criminal application No.1635 of 2021 have made out a case for their release on bail during the pendency of trial. Hence, following order.

ORDER

- i. Bail application no.1635 of 2021 filed by the applicant Pappu @ Maroti Suryakant Bhalerao is hereby rejected.

- ii. In connection with C.R.No.155 of 2021 registered at Basmath Gramin Police Station, District Hingoli, the applicants in B.A. no.1460 of 2021 i.e.-1.Gorakhnath s/o Vitthal Thorat, 2.Ankush s/o Vitthal Thorat and 3. Sachin s/o Vitthal Thorat, in BA no.1634 of 2021-1. Laxmi d/o Gajanan Gaikwad and 2.Laxman s/o Gajanan Gaikwad, in B.A. no.1555 of 2021-Datta s/o Sambhaji Kadam, in B.A. no.1554 of 2021-1. Ravi Suresh Bhalerao, 2. Ram s/o Datta (Dattarao) Kshirsagar and 3.Anand s/o Umakant Awate are directed to be released on bail on their executing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) each with one or two sureties each in the like amount.
- iii. The applicants shall not tamper with the evidence or pressurize any of the witnesses; and in particular the first informant.
- iv. The applicant shall co-operate with the expeditious disposal of the trial.
- v. The High Court Legal Services Sub-Committee, Aurangabad shall pay the fees

of the learned counsel appointed to to represent the cause of respondent no.2 as per rules in each of these bail applications.

- vi. All the bail applications are accordingly disposed off.

(SARANG V. KOTWAL, J.)

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