

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

922 BAIL APPLICATION NO.1700 OF 2021

Sainath S/o. Avchit Kale

Age: 50 years, Occu.: Agricultural Work,
R/o. Asara Nagar, Pathardi Road,
Shevgaon, Tq.Shevgaon,
Dist.Ahmednagar.

..Applicant
(Original Accused)

VERSUS

1. The State of Maharashtra
Through its Investigation Officer,
Beed Gramin Police Station, Beed.
Tq. & Dist.Beed.

2. X.Y.Z.

..Respondents

Advocate for Applicant : Shri Narayan B. Narwade

APP for Respondent No.1 : Shri S.B.Narwade

Advocate for Respondent No.2 : Shri Sawant h/f. Shri K. A. Khole

CORAM : M.G.SEWLIKAR, J.

DATE: 18th February, 2022

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.306 of 2020 registered with Beed Gramin Police Station, District Beed, under Sections 376(d), 376(2)(i), 366(A), 341 of the Indian Penal Code and under Section 3, 4, 9(g), 9(n), 10 of the Protection of Children from Sexual Offences (POCSO) Act.

2. Facts giving rise to this application are that the applicant is the uncle of the victim aged 15 years.

3. It is alleged in the FIR that on 16th September, 2020 at 02:00 p.m., the informant had hired a Auto Rickshaw and wanted to go to her maternal uncle at Beed. The name of her maternal uncle is Sainath Nirale Bhosale. She did not know the address of her maternal uncle Sainath Nirale Bhosale and therefore, she was making enquiries. At that time, applicant along with his wife Kavita Sainath Kale, his aunt Alkabai Vija Kale, his uncle Vija Avchit Kale, his sister-in-law by the name of Sachinta Sachin Kale, Astana Abbas Chavan and Jalubai Adnyan Bhosale intercepted the Auto Rickshaw by the Bolero Jeep. The informant was forced to alight from the Auto Rickshaw. The Auto Rickshaw Driver, out of fear, ran away from the spot of the incident. She does not remember the name of the Auto Rickshaw Driver nor the Auto Rickshaw number.

4. Applicant and the other six persons kidnapped the informant and took her to a bridge near Talegaon Shivar and took her to a road side field. At that time, accused Astana said that he would purchase the informant for Rs.2,00,000/-. The applicant demanded Rs.3,00,000/-. The said Astana dragged her

to a place behind a Neem tree and committed rape on her. She raised shouts. On hearing her shouts, two unknown persons stopped. On seeing them, applicant and those six persons ran away. Those two persons dropped her to S.P.Office, Beed. Accordingly, she lodged the report on 17th September, 2020.

5. Heard Shri N.B.Narwade, learned counsel for the applicant, Shri S.B.Narwade, learned APP for the respondent No.1-State and Shri Sawant h/f. Shri Kalyan Khole, learned counsel for respondent No.2.

6. Shri N.B.Narwade, learned counsel for the applicant submits that there are two shops in the vicinity of the spot of the incident. Both of the shop owners have stated in their statements under Section 161 of the Code of Criminal Procedure that they did not see anyone on 16th September, 2020 and they did not hear any shouts of any woman. He further submits that tower location as per CDR record shows that the applicant was at Shevgaon at the time of the incident.

7. Shri S.B.Narwade, learned APP for the respondent No.1-State submits that medical report supports the allegations made by the informant. He further submits that she is consistent in

her statement recorded under Section 161 of the Code of Criminal Procedure. Shri Sawant, learned counsel for respondent No.2 submits that the age of the victim was less than 13 years at the time of the incident. He submits that applicant has criminal background. A case under Section 302 of the Indian Penal Code is pending against him. A criminal case under Section 307 of the Indian Penal Code is pending against him for having administered poison to the informant. He further submits that while the applicant was on bail he committed another offence and therefore, he shall not be released on bail.

8. Prosecution has produced CDR report which shows that on 16th September, 2020 at 07:00 p.m. the applicant was at Shevgaon, District Ahmednagar. The CDR report shows that since 15th September, 2020, applicant was at Warur (Bk.), Tq.Shevgaon, Dist.Ahmednagar. On 16th November, 2020 from 05:46 p.m. till 07:30 p.m., he was at Papa Gulab Shaikh, Gut No.133/1, Rakshi, Tq.Shevgaon, District Ahmednagar. This report clearly shows that applicant was not present at the spot of the incident. Further, there are statements of the witnesses by name of Shahadev Arjun Mhaske and Balacharya Gholap. Witness Shahadev has a grocery shop near the spot of the incident. He has stated that he was present in the shop on the spot of the

incident but he did not notice any Bolero Jeep having come at the spot of the incident nor did he hear any screams from any girl. Similar is the statement of Balacharya. He has house near the spot of the incident.

9. Charge-sheet is filed. From the statement of the mother of the informant by name of Rani Nagnath Kale, it is apparent that a criminal case under Section 302 of the Indian Penal Code is pending against the applicant for having committed murder of elder sister of the informant. Her statement further reveals that 15 days before the incident applicant was released on bail. FIR shows that informant was admitted in the hospital for having administered poison by the applicant. After her discharge from the hospital, this incident seems to have taken place. This shows that parties are not on good terms. Having considered the statement of Shahadev and Balacharya and the CDR report showing location of the applicant at Shevgaon, it cannot be said that applicant was present at the spot of the incident. Moreover, medical evidence also does not support the prosecution. The position of hymen shows that there was old healed tear. It is true that the Medical Officer has opined that penetrative sexual assault cannot be ruled out. However, applicant is not alleged of penetrative sexual assault. It was alleged to have been

committed by accused Astana Abbas. As discussed above, the report of the CDR and the statements of the witnesses do not show presence of the applicant at the spot of the incident. In this view of the matter, I am inclined to release the applicant on bail. Hence, the order :-

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount in connection with Crime No.306 of 2020 registered with Beed Gramin Police Station, District Beed, under Sections 376(d), 376(2)(i), 366(A), 341 of the Indian Penal Code and under Sections 3, 4, 9(g), 9(n), 10 of the POCSO Act and on condition that he shall not pressurize the witnesses and shall not tamper the prosecution evidence.
- iii) Bail Application is disposed of.
- iv) It is clarified that the observations made in this 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**