

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3154 OF 2021

Rajaram Baburao Kale ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Nitesh Mohite i/b Mr. Sunil S. Kamble, for the Applicant.
Mr. P.H. Gaikwad, APP for the State.
Mr. Rohan P. Surve appointed Advocate for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED : 5th July, 2022

ORDER:-

1. The applicant, who is arraigned in C.R. No.70 of 2021 registered with Shahuwadi Police Station, Kolhapur, for the offences punishable under Sections 376(2)(F)(J)(N), 376(3) and 506 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"), and Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO") has preferred this application to enlarge him on bail.

2. The indictment against the applicant and co-accused Shivaji Sakharam Aadulkar runs as under.-

(a) The first informant – Respondent No. 2 is a resident of Savrewadi, Taluka Shahurwadi, District Kolhapur. She has a daughter, who was born on 4th September, 2004. Her husband

is given in to the vice of liquor. Her son was a driver on a JCB. Accused No.1 Shivaji Sakharam Aadulkar is a relative of first informant's niece Surekha. Accused No.1 - Shivaji was on visiting terms with the first informant. Accused No.2 - Rajaram Kale, the applicant, is a neighbor of the first informant. Accused No.2 - Rajaram was also on visiting terms with the first informant.

(b) On 12th March, 2021, Mrs. Sonali, the wife of accused No.1 Shivaji, came to the first informant's home and informed that the first informant's daughter, who was then 16 years and 6 months old, was pregnant. Upon being inquired, the victim informed the first informant that in the month of June of the previous year, accused No.2 Rajaram had come to her house on the pretext of demanding tobacco and forcibly ravished her. Accused No.1 had also threatened her not to disclose the incident to anybody. Accused No.1 had given her a tablet so as to expedite the menstruation. After 2 to 3 days, accused No.1 again had forcible physical relations with the victim amidst threat of dire consequences. Accused No.1 allegedly ravished the victim on multiple occasions whenever there was nobody in the house of the first informant.

(c) The victim further narrated that in the month June of the previous year, applicant No. 2 Rajaram had also came to her house, on the pretext of getting a rope. The applicant forcibly took her to the dining area. She raised alarm. However, nobody came to her rescue. The applicant also ravished her. According to the victim, the applicant had forcible physical relations with her whenever she happened to be alone in home. Since the father of the applicant was addicted to liquor, and due to fear of infamy, she did not disclose the said incident to anybody.

3. The first informant approached Shahuwadi Police and lodged report, leading to C.R. No.70 of 2021. The medico-legal examination of the victim was conducted. The applicant came to be arrested. The statement of the victim under Section 164 of the Code of Criminal Procedure, 1973, was also recorded by the Jurisdictional Magistrate. Post completion of investigation, charge-sheet has been lodged.

4. I have heard Mr. Mohite, the learned counsel for the applicant, Mr. Gaikwad, the learned APP for the State and Mr. Surve, the learned Counsel appointed to espouse the cause of respondent No.2.

5. Mr. Mohite, the learned counsel for the applicant, made an earnest endeavor to draw home the point that it was accused No. 2 - Rajaram, who ravished the victim. The applicant has been falsely roped in. Mr. Mohite banked upon the medico-legal examination of the victim wherein, according to the learned Counsel for the applicant, the victim had disclosed the name of accused No.1 - Shivaji. Mr. Mohite further submitted that, in the intervening period, report of DNA has been received and the applicant has been excluded to the biological father of femur bone piece of the baby of the victim. The DNA report, according to Mr. Mohite, completely rules out the complicity of the applicant.

6. Per contra, Mr. Gaikwad, the learned APP, would submit that the victim has categorically named the applicant as the person, who also exploited her taking undue advantage of the tender age and adverse familial conditions. Attention of the Court was invited to the statement of the victim recorded under Section 164 of Code, wherein the victim had categorically narrated that though the applicant was married, he had forcible relations with her since a year prior to lodging of the report.

7. Mr. Surve, the learned Counsel supplemented the submissions of the learned APP.

8. In the first information report, the first informant had reported the incident as narrated to her by the victim. It is evident that the victim did not claim that accused No.1 and the applicant ravished her together or that they shared a common intention to exploit her. The victim had stated that accused No.1 and the applicant independently exploited her by administering threats of dire consequences. The allegations are required to be considered in the backdrop of the adverse social condition reported to by the first informant and the opportunities the situation presented for accused No.1 and applicant to exploit the victim. The applicant is stated to be the neighbor of the victim. In this view of the matter, merely because the victim narrated that accused No.1 was the first person, who deflowered her does not imply that the complicity of the applicant is ruled out.

9. In the statement under Section 164 of Code of Criminal Procedure before the learned Magistrate, the victim had specifically stated that both accused No.1 and the applicant repeatedly violated her by giving threats. Even in the history narrated before the Medical Officer, the victim has named the applicant. The Medical Officer has noted that the victim stated that “they” tortured the victim by giving threats and subjected her to sexual exploitation.

10. In the face of the aforesaid material, I find it rather difficult to accede to the submission on behalf of the applicant that no *prima facie* case is made out against the applicant.

11. At this stage, the report of DNA, also does not advance the cause of the applicant. It would suffice to note that the chemical analyst has also opined that accused No.1 Shivaji Adulkar is excluded to be biological father of femur bone piece of the baby of the victim. If the DNA report is to be given weight, to the extent desired by the applicant, both accused No.1 and applicant stand exonerated. In the face of the statement of the victim, *prima facie* corroborated by the medico-legal examination report and the statement of the first informant, at this juncture, DNA report does not command primacy.

12. Since the applicant is the next door neighbour and a much married man, the apprehension on the part of the prosecution appears to be well-founded especially in the backdrop of vulnerable social condition of the victim and her family.

13. Hence, I am not inclined to exercise the discretion in favour of the applicant.

14. Thus, the following order.

ORDER

- (i) The application stands rejected.
- (ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

[N. J. JAMADAR, J.]