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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 285 OF 2022**

Tukaram Kanha Paradhi and Anr. Applicants.
V/s
The State of Maharashtra and Anr. Respondents.

Mr. Kuldeep S. Patil i/b Heena Suvarnakar for the Applicants.
Mr. N.B. Patil, APP for Respondent No.1.
Mr. Prashant S. Hagare for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 26, 2022

P.C.:-

1] Applicants are seeking regular bail in C.R.I-172 of 2021 registered with New Panvel Police Station, Dist. Raigad for the offences punishable under Sections 376 376(D), 341, 352, 506(2) read with Section 34 of the IPC and under Sections 5(g), 5(h) and 6 of the POCSO Act. Applicant No.1 was arrested on 23/5/2021 and Applicant No.2 was arrested on 21/05/2021.

2] The case of the prosecution is, victim-non-applicant No.2 had been to the place of her maternal aunt for attending pre-wedding ceremony. She alongwith her cousin went to the place of Parshuram one of the witnesses, where Parshuram introduced her to Sitaram another witness at about 10.15 A.M. Both victim and Sitaram were talking together about 50 meters away from the said house. Applicants at the point of knife threatened the victim and committed

sexual offence.

3] Submissions of Mr. Patil, Counsel appearing for the Applicants are, Applicants are falsely implicated in crime. According to him, Applicants witnessed closeness of victim with Sitaram that too in late night hours which perhaps has prompted complainant with both Sitaram and Parushuram to hatch false story of involvement of the Applicants in the crime in question. So as to substantiate his claim, he has relied on statement of Parshuram, Sitaram, so also victim girl. In addition, he would urge that there is unexplained delay in lodging FIR. He would urge that complaint discloses names of Applicants which speaks of deliberation between all the three of filing false case.

4] While countering aforesaid submissions, learned APP would urge that even if victim has reported late in point of time about the incident, same is duly explained in the FIR. He would further urge that medical evidence supports the case of the prosecution in entirety, including that of recovery/discovery of knife under Section 27 of the Indian Evidence Act from the Applicants. As such, he would urge that Application needs to be rejected as Applicants are prima facie involved in a serious offence which is punishable with life imprisonment.

5] I have appreciated said submissions.

6] On the date of the incident i.e. 15/5/2021 victim was a minor is not in dispute. After the incident occurred on 15/5/2021, victim has

not only interacted but appears to have enjoyed wedding with other relatives. The victim has not narrated the incident to any of her relatives including Parshuram, Sitaram who were alongwith the victim. Statements of witnesses which are recorded under Section 161 speak that both the witnesses i.e. Parshuram and Sitaram tried to locate the victim immediately after arrival of Applicants. Though it is claimed by them that they traced the victim, however she has neither narrated the incident to the said witnesses nor to her parents or the other relatives. The medical evidence which is pressed into service by the learned APP speaks about old tear to hymen. However said evidence about tearing of hymen which is old cannot be considered to the detriment of the Applicants at this stage of the proceedings. In view of conduct, statements of witnesses Parshuram and Sitaram also are not reposing confidence in the case of the prosecution.

7] Fact remains that victim was a resident of Thakurwadi Kevale, post Morbe, Taluka Panvel whereas incident appears to have taken place at Karambeli, Taluka Panvel. In response to the court's query, Counsel for the Applicants, on instructions, informs that distance between these two places is 10 to 15 Kilometers. If aforesaid factual matrix is appreciated, fact remains that victim girl has specifically named the Applicants in the FIR. However she has not mentioned as to her source of knowledge about identity of the Applicants. There appears to be some substance in the submissions of Mr. Patil, learned Counsel appearing on behalf of the Applicants that before lodging FIR, both the witnesses have deliberation with the complainant and

accordingly aforesaid story was put of implication of the Applicants in the false offence so as to avoid disclosure of the incident and meeting of one of the witnesses with victim in late night hours. Incident admittedly is reported after six days to the Investigating Agency for which there is no convincing submission has come forth.

8] Fact remains that investigation in the matter is already over and the Applicants are charge-sheeted. Applicants are also in their young age i.e. 24 and 23 years. Father of the victim has appeared through lawyer and has supported the case of the Applicants, as it is claimed that for the reasons unknown, Applicants are falsely implicated by his daughter. Be that as it may, having regard to the merits as narrated hereinabove, case for grant of bail is made out.

9] Applicants are directed to to be released on bail in C.R.I-172 of 2021 registered with New Panvel Police Station, Dist. Raigad for the offences punishable under Sections 376 376D, 341, 352, 506(2) read with Section 34 of the IPC and under Sections 5(g), 5(h) and 6 of the POCSO Act, on execution of P.R. Bond of Rs 25,000/- each with one or more sureties in the like amount. Applicants shall neither influence the witnesses nor tamper with the evidence. Applicants shall not enter the village where the victim resides.

10] Application is disposed of.

(NITIN W. SAMBRE, J.)