

VAISHALI
ANIL
TIKAM

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

BAIL APPLICATION NO. 657 OF 2021

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Husen @ Dada Narsu Waghmode ... Applicant
Vs
The State of Maharashtra & Anr. ... Respondents
...

Mr. Swaraj Jadhav for the Applicant
Mr. N.B. Patil, APP for the State/Respondent No.1
Mr. Chetan Alai for Original Complainant/ Respondent No.2
Mr. Pradeep Surve, Yerwada Police Station,Pune

CORAM : SANDEEP K. SHINDE J.
DATE : 11th NOVEMBER, 2022.

PC. :

1. Heard learned counsel for the Applicant, Learned APP for the State and Learned Counsel for the Victim.
2. Applicant seeks his enlargement on bail in connection with Crime No. 875 of 2019 registered at Yerawada Police Station, Dist. Pune on 11th December, 2019 upon a complaint lodged by mother of victim under Section 376, 376(2) (N), 354, 354(A) and 506 of the Indian Penal Code and

Section 4, 5(j) (2), 6,8 and 21 of The Protection of Children from Sexual Offences Act, 2012.

3. The Applicant is 45 year old person. He was arrested on 12th December, 2019. Investigation is over and the charge sheet has been filed. As such, Applicant has been incarcerated for about 2 years and 11 months.

Prosecution Case:

4. When, victim, complained of stomach ache, she was examined by the doctor and advised a sonography test. The test revealed pregnancy. Whereafter, in December, 2019 on a complaint by mother, crime in question came to be registered. Statement of victim was recorded on 11th December, 2019, let out facts; (i) that victim had physical intimacy, with one Datta (co-accused) (ii) she conceived from Datta but she did not disclose this fact to anyone as she was threatened of dire consequences by him. Thus, she roped in the applicant, alleging he, subject her to sexual assault. In any case, the DNA Test, concluded that the victim was a biological mother of

product of conception; however, Applicant was excluded to be biological father. Therefore, DNA report on the face of it renders the prosecution case indefinate. The offence 'sexual assault', as defined under POCSO is punishable with imprisonment, which shall not be less than three year, but which may extend to five years and shall also punishable to fine. Herein Applicant has been incarcerated nearly for three years as against the maximum sentence of five years. Thus on consideration of the facts above and taking overview of circumstances, a case is made out for granting bail to the Applicant. Thus, the following order:

ORDER

- (i) The applicant in Crime No. 875 of 2019 registered with Yerawada Police Station, Dist. Pune shall be released on executing PR bond for the sum of Rs.25,000/- with one or more sureties in like sum;
- (ii) The applicant shall report concerned police station once in a month i.e. on second Monday of every month at 1.00 p.m.;

- (iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail;
- (iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The applicant shall attend concerned police station as and when called and co-operate in the investigation;
- (vi) The application is accordingly allowed and disposed of.

It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)