

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.970 OF 2021

Rahul Shivaji Petkar

Applicant

versus

The State of Maharashtra

Respondent

Mr.Jay S. Patil i/by Mr.VireshV. Purwant, Advocate for applicant.

Mr.Yashpal Thakur, Advocate for respondent no.1.

Ms.PN.Dabholkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th April 2022

PC :

1. This is an application for bail in CR No.417 of 2019 registered with Solapur Taluka Police Station, District Solapur for the offences punishable under Sections 354(A), 511, 376 of Indian Penal Code and under Sections 4,8,12 of Protection of Children from Sexual Offences Act, 2012 (‘POCSO Act’).

2. The case of prosecution is that on 7th June 2019 the victim was taken to the room and by removing her clothes the accused lied on her body. The accused is brother-in-law of the complainant. Family of the accused and complainant are residing in same Wada. The FIR was lodged by mother of the victim on 9th June 2019 for offences under Sections 354(A) of IPC and under Sections 4,8,12 of POCSO Act. The statement of victim girl and other witnesses were recorded. Subsequently section 376 of IPC was added. On completion of investigation charge sheet was filed.

3. The applicant had preferred application for bail before this Court. The said application was disposed of by order dated 28th February 2020. The applicant had argued at that point of time that applicant is in custody from 17th June 2019 and there are no criminal antecedents against him. The applicant may be permitted to withdraw the application and trial may be expedited. The application was allowed to be withdrawn. Trial was expedited. It was further directed that in the event trial is not concluded within a period of nine months, the applicant will be at liberty to prefer application for bail. Subsequently the applicant had preferred application for bail before Sessions Court which has been rejected by order dated 20th October 2020.

4. Learned advocate for applicant has submitted that applicant is in custody for 2 years and 9 months. Although trial was expedited, it is not yet concluded. The prosecution has examined two witnesses. There are about 23 witnesses. There is no allegation of penetrative sexual assault. Medical examination report does not indicate that victim girl was subjected to penetrative sexual assault. The offence under Section 376 of IPC and Section 8 of POCSO Act is not made out.

5. Learned APP and learned advocate for respondent no.2 submitted that at this stage it cannot be said that there is no penetrative sexual assault. The accused is the relative of victim. The accused had taken undue advantage of the situation and sexually assaulted the victim girl who was aged around seven years at the time of incident. The statement of victim girl, her brother and other witnesses support prosecution case. The version of this witness

would indicate that the accused was lying on the body of victim. The victim had complained about pain in abdomen. The statement of victim girl was recorded under Sections 161 and 164 of Cr.P.C. Medical evidence refers to medical opinion which indicate that final opinion is kept pending till receipt of FSL report. The victim has also referred to one previous incident. Penetrative sexual assault as defined in Clause (c) of Section 3 of POCSO Act refers to manipulation of any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person. By interpreting said provision and considering the fact that applicant was lying on the body of victim, it cannot be said at this stage that Section 376 or Section 8 of POCSO Act is not applicable.

6. Undisputedly applicant is in custody from 17th June 2019. Previous application was allowed to be withdrawn and trial was expedited vide order dated 28th February 2020. Although period of about 2 years has passed after the order expediting trial, the prosecution has so far examined about two witnesses. It is not clear as to when trial would get over. The version of victim girl and other witnesses alleges that accused was lying on the body of victim after removing clothes. The victim in her statement under Sections 161 and 164 of Cr.PC has not referred to any penetration. The medical examination report of the victim girl mentions that there is no evidence of any external injury. It is further noted that there is no evidence of injury to the genitals of victim. Although report indicate that final opinion is kept pending till FSL report, the medical report also mentions that there is no evidence of sexual intercourse. Learned APP and learned counsel for respondent no.2 have

submitted by interpreting Section 3 of POCSO Act that there is reason to believe that there was penetrative sexual assault. Prima facie medical evidence and version of victim does not mention that there was penetrative sexual assault. The applicant is in custody from 17th June 2019. Considering these aspects, case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.417 of 2019 registered with Solapur Taluka Police Station, District Solapur, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Solapur Taluka Police Station, District Solapur once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not approach victim or her family members and shall not tamper with evidence;
- (v) The applicant shall not stay in the residential wada where the victim and her family resides;
- (vi) The applicant shall intimate the place of his residence to Investigating Officer.

(PRAKASH D. NAIK, J.)

MST