

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1193 OF 2021**

Sagar Baban Jagtap ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Aniket Nikam, for Applicant.
Mr. P.H.Gaikwad, APP, for State.
Mr. Arvind D. Aswani, appointed Advocate for Respondent No.2.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 28th JUNE, 2022
PRONOUNCED ON : 13th JULY, 2022**

P.C.

1. The Applicant who is arraigned in C.R.No.620 of 2020 dated 24th October, 2020 registered with Shirur Police Station, Pune, has preferred this Application to enlarge him on bail.

2. The indictment against the Applicant and the co-accused runs as under :

The Respondent No.2 – first informant resides at Aamdabad, Shirur. She is the mother of the victim who was 13 years and six months at the time of the alleged occurrence. On 1st June, 2020 the victim was accosted by co-accused No.1. He proposed her. As the victim did not reciprocate, the accused No.1 threatened to set her shop on fire.

3. On 29th June, 2020 at about 7.30 p.m., the co-accused No.1 called the victim near the school of the village. The Applicant who is allegedly a friend of the co-

accused, was present thereat. The co-accused threatened the victim and forcibly ravished her. When the victim resisted and raised alarm, the Applicant gagged her mouth and caught hold of her hands, whilst the co-accused ravished her. After exploiting the victim, the co-accused threatened her with dire consequences in the event she disclosed the said incident. On 28th August, 2020 the co-accused and the Applicant again took the victim to the said school. The co-accused again sexually exploited her by administering threats. The Applicant allegedly gagged the mouth of the victim and caught hold of her hands, whilst the co-accused exploited her.

4. Whenever the victim happened to see the Applicant and the co-accused, she got scared, and at times cried. The daughter in law of the first informant noticed the said condition of the victim. Eventually, the victim confided in the daughter in law of the first informant. Thereupon, the first informant lodged a report. The Applicant and the co-accused came to be apprehended. Post completion of investigation, charge sheet has been lodged.

5. The Applicant has preferred this Application to release him on bail on the ground that the offences punishable under Section 376 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 are not prima facie made out qua the Applicant. No role of actual sexual assault is attributed to the Applicant. He has been in custody since 25th October, 2020. Further detention of the Applicant is not at all warranted.

6. I have heard Mr. Nikam, learned Advocate for the Applicant, Mr. Gaikwad, learned APP for the State and Mr. Aswani, learned Advocate appointed to espouse the cause of Respondent No.2 – the first informant.

7. Mr. Nikam, learned Advocate for the Applicant submitted that the first incident of alleged exploitation was of 29th June, 2020. Second incident allegedly occurred on 28th August, 2020. However, FIR came to be lodged on 24th October, 2020. This inordinate delay in lodging the report erodes the credibility of the first informant and the victim's version. It was submitted that it cannot be urged that, in the intervening period, the victim had no opportunity to narrate the incidents to her parents and relatives.

8. Mr. Nikam would further urge that the allegations qua the Applicant are not of actual sexual assault, but assisting the co-accused. In this backdrop, it cannot be said that the Applicant shared any common intention with the co-accused in exploiting the victim. Having regard to almost two years period of incarceration, the Applicant, according to Mr. Nikam, deserves to be enlarged on bail.

9. The learned APP and the learned Counsel for the Respondent No.2 resisted the prayer to release the Applicant on bail. They were in unison on the point that the victim was forcibly ravished by co-accused and the Applicant played a significant role in facilitating the violent sexual assault. It cannot, therefore, be said that the Applicant do not share common intention. Attention of the Court was

invited to the statement of the victim dated 24th October, 2020.

10. I have perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it. The first informant claimed to have learnt about the sexual exploitation of the victim from her daughter in law. Thereupon, a report was lodged. It is true that two incidents of alleged exploitation occurred on 29th June, 2020 and 28th August, 2020 and FIR was lodged on 24th October, 2020. However, the submission based on the delay in lodging the FIR is required to be appreciated in the light of the attendant circumstances. I have perused the statement of daughter in law of the first informant. She had stated the circumstances in which the victim opened up before her. The situation in which the victim of sexual assault, who was barely 13 and half years of age, found herself, deserves to be taken into account while appreciating the aspect of delay.

11. It is imperative to note that the victim had not attributed to the Applicant the role beyond that of gagging her mouth and holding her hands, when the co-accused ravished her. The submission on the part of the Applicant that in view of this limited role attributed to the Applicant, the Applicant cannot be roped in for the offences punishable under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act, appears attractive at the first blush. However, it is pertinent, the limited role attributed to the Applicant, prima facie, rules out motivated and false implication. Even before the Medical Officer, the victim had attributed the same role

to the Applicant. It would, thus, be a matter for consideration as to whether a charge for the offence punishable under Section 376D as well can be pressed,

12. It is imperative to note that the victim has categorically asserted that on both the occasions, she was forcibly ravished and her efforts to resist the exploitation were thwarted by the act of the Applicant. In the aforesaid view of the matter, I am not persuaded to exercise the discretion in favour of the Applicant for the reason that the violent character of the act gets clearly attracted to the co-accused and the Applicant.

13. Moreover, release of the Applicant on bail may pose threat to the safety of the victim and her family as they appear to be in vulnerable position. The apprehension on the part of the prosecution that there is a possibility of tampering with the evidence, in the circumstances of the case, appears well founded. Hence, the following order :

ORDER

The Application stands rejected.

(N.J.JAMADAR, J.)