

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

CRIMINAL BAIL APPLICATION NO.1043 OF 2021

Sanket Sandeep Shigwan

... Applicant

Vs.

The State of Maharashtra & Anr.

... Respondents

Mr.Pradeep M. Patil for the Applicant.

Ms.M.R. Tidke, APP for the Respondent –State.

Mr.Madan Gupta for Respondent No.2.

CORAM : C.V. BHADANG, J.

**DATE : 5 JANUARY 2022
(Through Video Conferencing)**

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P.C.

. This is an application for bail. The Applicant-Accused has been charge-sheeted for the offence punishable under Section 376 and 354 of the Indian Penal Code and Section 4,8 and 12 of the Protection of Children From Sexual Offences Act, 2012.

2. The trial has commenced and the prosecution has examined victim who was at the relevant time said to be 15 years of age, being born in the year 2005.

3. The prosecution case is that the Applicant who was a resident of the same village was known to the victim had asked the victim for sexual favour which the victim initially refused. However, on 20 April 2020 at about 7.30 p.m. the Applicant is alleged to have asked the victim to come to meet him and accordingly the victim went and the Applicant had taken her to his uncles house which was locked. After opening the lock the Applicant had forcibly sexual intercourse with her. On the basis of the complaint lodged by the victim offence came to be registered and after investigation the trial is going on.

4. The learned counsel for the Applicant pointed out that the evidence of the victim has been recorded in which she has disowned any incident of sexual abuse by the Applicant and therefore, she was cross-examined by the learned Additional Public Prosecutor. The learned counsel has read out the evidence of the victim in order to point out that now there is no evidence in support of the allegations against the Applicant.

5. The learned Additional Public Prosecutor and the learned counsel for the Respondent-Complainant has stated that there is medical evidence as also there is a statement of the victim recorded by the learned Magistrate under Section 164 of Cr.P.C. which shows that the victim was subjected to act of sexual abuse

by the Applicant. It is submitted that this is not the stage to appreciate the evidence.

6. I have considered the submissions made. It is true that the trial is still pending and it is neither necessary nor appropriate to appreciate the evidence in details or to express any final opinion, on the same and it is for the Special Court to examine the entire prosecution evidence and then decide the case in accordance with law. However, as at present the issue is about the need and justification for further incarceration of the Applicant in the context of the stand taken by the victim on oath before the Special Court.

7. The Applicant is in custody since April 2020 and *prima facie* having regard to the evidence of the victim recorded before the Special Court, in my view discretion can be exercised in favour of the Applicant subject to conditions. It is however, made clear that this is only for the purpose of deciding the Application for bail and it will be open for the learned Special Court to decide the trial on its own merits and in accordance with law. Hence the following order.

ORDER

- (i) The applicant be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/-with one or two solvent sureties, in the like amount.

(ii) The applicant shall not make any attempt directly or indirectly, to contact the victim and shall not otherwise tamper with the prosecution evidence/ witnesses.

(iii) The bail bonds to be furnished before the learned Special Judge.

(iv) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.