

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

BAIL APPLICATION NO.2545 OF 2021

Khagesh @ Bhurya @ Yogesh
Shalikrao Magar
Age 21 years, Occ: Student,
R/o Sakur, Tal.Malegaon, Dist.Nashik
(Presently in Nashik Central jail.) ... Applicant.
Versus

1.The State of Maharashtra
Through Malegaon Taluka Police
Station, Tal.Malegaon, Dist.Nashik

2.Yogesh Trimbak Magar
Age 38 years, Occ:Agriculturist,
R/o Sakur, Tal.Malegaon, Dist.Nashik .. Respondents.

...

Mr Aniket U. Nikam, Advocate a/w Adv. Piyush Toshnival a/w
Adv. Aashish Satpute a/w Adv. Amit Icham i/b Advocate Vivek
Arote, for the Applicant.

Mr V.B.Konde Deshmukh, APP for the State.

Ms Devyani Kulkarni, Advocate (Legal Aid) for Respondent No.2.

CORAM : R. N.LADDHA, J.

DATE : 23 DECEMBER 2022

P.C.:

Heard learned Counsel for the parties.

2. By this application, the Applicant is seeking bail in connection with C.R.No.192 of 2021 registered at Malegaon Taluka Police Station, Nashik, against the Applicant for the offences punishable under Sections 363, 366-A, 306, 450, 376, 376(3), of the Indian Penal Code, 1860 and Sections 4, 6, and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. Mr Aniket Nikam, learned Counsel appearing on behalf of the Applicant, submitted that the Applicant has been in jail since 7.4.2021. The investigation is complete, and the charge sheet has been filed. It is submitted that the trial is not yet started. The Applicant has no criminal antecedents. He is a boy of just 21 years of age and he is a student. It is submitted that there is no possibility of the Applicant fleeing away or tampering with the witnesses, and if he is enlarged on bail, he will not misuse the liberty of bail.

4. Further, it is submitted that the Applicant was arrested on suspicion, and there is no evidence on record to connect the Applicant with the alleged crime. It is submitted that the police have already seized the Applicant's mobile phone but have not taken the CDR of the said phone, nor was it sent for a

Forensic report. It is submitted that in the F.I.R., it is alleged that the Applicant ran away from the house and after that, the victim left the house and locked the door from outside. It is submitted that it is not the complainant's case that the Applicant has taken the victim from his home. It is also not the case of the prosecution that the grandfather saw the victim and the Applicant in a compromising position. Merely because the victim and Applicant were allegedly seen in naked position, it can not be concluded that the Applicant had committed rape on the victim.

5. It is submitted that in the entire complaint, nowhere is it stated that the Applicant had threatened the victim that he had her photographs and he would make viral the said photographs on the social network. Though the mobile phone of the Applicant was seized, the police have not investigated the photographs. It is submitted that the victim, along with her sister, went to another house, but the police did not record the statement of the victim's sister. It is submitted that in the Post Mortem report, it is mentioned that the victim had taken her last meal about 4 to 6 hours before her death. The Post Mortem started at about 5.30 p.m. and finished at 6.30 p.m., and witnesses said they had found the victim's dead body at about 10.30 in the morning.

6. Mr V.B.Konde Deshmukh, learned Additional Public

Prosecutor appearing for the State, and Ms Devyani Kulkarni, learned Counsel for the second Respondent, submitted that the offence is serious. The victim was 14 years and 7 months at the time of the incident. The victim's grandfather saw the victim and the Applicant in naked condition. The mobile phone of the Applicant was seized. They submitted that the Medical Officer in the Post Mortem Report had opined that there was a possibility of intercourse. They conceded that police had not collected the CDR of the mobile phone used by the Applicant, but that cannot be considered to substantiate the ground for seeking bail. The alleged incident occurred on 5.4.2021 when the victim and the accused were seen in a naked condition in the house of the complainant himself.

7. This Court has perused the Application, Charge Sheet filed along with the documents placed on record. It reveals from the record that the incident in question had taken place on 05.04.2021. Initially, the offence was registered under Section 363 of the Indian Penal Code. The Applicant was arrested on 07.04.2021, and since then, he has been languishing in jail. The Applicant is a student of 21 years of age. There is nothing on record to show that the Applicant has criminal antecedents. Admittedly, though the mobile phone of the Applicant was seized, the police have not taken the CDR of the said phone, nor was the phone sent for Forensic report. Further, prima facie, it appears

that the Applicant ran away from the complainant's house. After that, the victim left the house and locked the door from the outside. It also appears that in the post-mortem report, the probable cause of death is 'death due to drowning'. The charge sheet has been filed. The trial is not yet started. The Applicant cannot be said to be at flight risk. No fruitful purpose will be served by keeping the Applicant behind bars. The Applicant has been behind bars for more than 20 months.

8. Given the above, this Court is of the opinion that since the investigation is already complete and the charge sheet is filed as far back as 5.5.2021 and the fact that the Applicant is a student of 21 years of age, bail could be granted by imposing suitable conditions on the Applicant.

9. Accordingly, the application is allowed in the following terms:

ORDER

a) The Applicant Khagesh alias Bhurya alias Yogesh Shalikrao Magar shall be released on bail in C.R.No.192 of 2021 registered at Malegaon Taluka Police Station, Nashik, on furnishing a PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the concerned Court.

- b) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- c) The Applicant shall furnish the permanent address and contact details to the Inspector of Police of the concerned Police Station and intimate the change, if any.
- d) The Applicant shall regularly attend the proceedings before the trial Court.

10. Needless to say, violating any of the conditions above will make the Applicant liable for cancellation of bail.

11. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

12. All the parties to act on an authenticated copy of this Order.

[R. N. LADDHA, J.]