

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1735 OF 2020

Akram Kasim Bagwan

...Applicant

Vs.

The State of Maharashtra

... Respondent

Dr.Samarth S. Karmarkar a/w Mr.Harekrishna Mishra i/b
Karmarkar & Associates for the Applicant.

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

CORAM : C.V. BHADANG, J.

DATE : 22 FEBRUARY 2022

P.C.

. This is an application for bail. The Applicant has been charge-sheeted for the offence punishable under Section 302, 376, 376(A), 201 of the Indian Penal Code, read with Section 4, 5(m) and 6 of the Protection of Children From Sexual Offences Act, 2012.

2. On 28 July 2019 at about 2.30 p.m. when the Applicant came home from a job, he found that there was no response from his wife and the door was closed of the house from inside. After he sought the help of his landlord and entered the house, it was found that the three children of the Applicant namely, two daughters aged about 9 and 7 years and son aged

about 6 years were hanging from the ceiling and even the wife was found to be hanging by the ceiling.

3. In the investigation it was disclosed that both the girls were subjected to sexual abuse and there were injuries on their private parts. During the course of the investigation the clothes of the Applicant came to be seized. According to the prosecution there were blood stains as well as white stains on the clothes, which were sent for Chemical Analysis Report which is awaited. The statement of the owner of the flat and the witnesses came to be recorded and after investigation a charge-sheet is filed.

4. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. Perused record.

5. It is submitted by the learned counsel for the Applicant that there are no circumstances or evidence to show the complicity of the Applicant in the said offence. It is submitted that the Applicant was not present at the house at the time of incident and when he had returned from his job, he had shocked, to see his wife as well as three children hanging in the house. It is submitted that the CA report is awaited.

6. The learned Additional Public Prosecutor has submitted that the offence is serious in which the wife and three

children of the Applicant have lost their life and the daughters were also sexually abused before death. It is submitted that the clothes of the Applicant including underwear were recovered from the house of the Complainant and blood stains and white stains were found on the clothes, which are sent for the CA report. It is submitted that the circumstances, and within the special knowledge of the Applicant, within the meaning of Section 106 of the Evidence Act.

7. I have carefully considered the circumstances and the submissions made. It is true that the case is based on circumstantial evidence and there is no eye witness account of the incident on record. However, it *prima facie* appears that the wife and three children of the Complainant were found to be hanging at their residence. If that be so it is within the special knowledge of the Applicant as to the circumstances which led the wife to commit suicide and to hang three children. The daughters have also been found to have been sexually abused.

8. The offence is serious by any standards. The PM report also shows that the two children were sexually abused and there are injuries on their private part. The seizure panchnamma of the clothes also shows blood stains and white stains on the clothes of the Applicant in respect of which the CA report is awaited. This is not the stage to appreciate the evidence in details

or to see whether the evidence is sufficient to lead to a conviction. Having regard to the nature of the circumstances and the material collected, I do not find that a case for grant of bail is made out. The Criminal Application is rejected.

9. The observations herein are of a prima facie nature for the limited purpose of deciding the plea for bail. The learned Sessions Judge shall not be influenced by the same at the trial.

C.V. BHADANG, J.