

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3530 OF 2021

Jamir Khudbuddin Darweshi @ Pathan ..Applicant
v/s
The State of Maharashtra ..Respondent.

Mr. Ganesh Gole i/b, Mr. Ateet Shirodkar, for the Applicant.
Mr. A. A. Palkar, APP for the Respondent-State.
Mr. Arif A. M. Ali i/b, Mr. Ritesh Ratnam Respondent No.2

CORAM: VINAY JOSHI,J.
DATED : 21st APRIL, 2022.

P. C.:

1. The Applicant is seeking for regular bail in Crime No. 244 of 2020 registered with Radhanagari Police Station, Kolhapur for the offence punishable under sections 376(2) (f), 509 of the Indian Penal code and under section 4, 9(n) and 10 of the Prevention of Children from Sexual Offences Act, 2012.

2. At the instance of report lodged by victim aged 17 years 9 months the crime was registered . It is the prosecution case that victim was residing along with her family members. The accused is related to her i.e. accused was father-in-law of her brother. The victim stated that on 3rd December 2020 in late night all family members had food and slept. In the night around 4.30

a.m. the victim perceived that the accused came closure . The accused putting her under threat removed her clothes and sexually exploited.

3. Victim stated that after incident she saw that the accused slept besides her father. It is her case that father did not like that any one to woke him at midnight. Therefore she did not disturbed her father. It is her case that she give a call to her mother, mother-in-law but nobody woke up, therefore she returned to her bed. On the following day she disclosed the things to her mother and therefore the report.

4. The learned counsel appearing for applicant mainly claimed bail on merits as well as on medical ground. He has strenuously argued that the incident as narrated in first information report is totally improbable. He would submit that though the parents of victim were present, despite sexual assault she kept silence which is doubtful. He would submit that the victim was grown up girl at the verged attaining majority.

5. It is prosecution case itself that all family members were slept in the nereby room where sexual assault took place. Nighter the victim raised alarm nor she disclosed to

thing to anybody in the night. Having regard to the said fact prima facie their appears to be substance in the submission made by applicant's learned counsel. Moreover medical examination report does not support the case of forcible sexual intercourse.

6. Besides that, the applicant while in custody due to ailment he was under medical treatment. The prosecution has produced the medical examination report of the applicant accused date on 07.04.2022. Medical officer of Government hospital Kolhapur has opined that the applicant is suffering from paralysis. The conclusion drawn by medical officer are as below.

*OPINION OF MEDICAL OFFICER QUA SR.
NO.1:- Known case of left side Cerebro Vascular Accident (CVA) with left hemiparesis (left sided paralysis) with Cervical Spondylitis and disc bulge at C3 to C6 on regular treatment advised by the experts from Government C.P.R. Hospital, Kolhapur as well as from Civil Hospital, Sangli.*

7. It is informed that yet charge is not framed. Certainly trial would take its own time for disposal. Having regard to the nature of accusation as well as captivating of applicant he can be released on bail by imposing certain conditions. In view of that following order.

ORDER

(A) The Applicant Jamir Khudbuddin Darweshi @ Pathan is released on bail in connection with Crime No. 244 of 2020 registered at Radhanagari Police Station, District Kolhapur for the offence punishable under Sections 376(2) (f), 506 of the Indian Penal code, on his furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not temper with the prosecution evidence.

(VINAY JOSHI, J.)