

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 3 OF 2022

Dr. Sohan @ Sonu Narayandasji Lohiya,
Aged about 44 years, Occ.: Medical
Practitioner, R/o. Kelkar Wadi, Tahsil
and District : Wardha. (In Jail)

.... **APPELLANT.**

// **VERSUS** //

- 1) The State of Maharashtra,
Through Police Station Officer,
Wardha (City), Wardha.
- 2) Victim through her father
Ajay S/o. Shankarrao Ramteke,
Aged 47 years, Occu.: Teacher,
R/o. Vaishnavi Complex-1,
Vasudeo Nagar, Wajurkar Layout,
Anjanamata Mandir Road, Karla
Chowk, Wardha.

.... **RESPONDENTS.**

Shri R.M.Daga, Advocate for Appellant.
Shri S.D.Sirpurkar, A.P.P. for Respondent No.1/State.
Shri R.M.Sharma, Advocate for Respondent No.2.

CORAM : SURENDRA P. TAVADE, J.
DATED : JANUARY 17, 2022.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant, learned counsel for respondent No.2 and the learned A.P.P. for the Respondent No.1/State.

2. **ADMIT.**

3. The appellant has filed this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order of the trial Court rejecting bail in Crime bearing No.1448 of 2021, registered with Police Station, Wardha (City) for the offences punishable under Sections 354A(1)(i) of the Indian Penal Code and Sections 3(1)(w)(i), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO Act”).

4. It is alleged that on 15/11/2021 at about 08:00 p.m. the victim girl along with her parents came to the hospital for her eye check-up. There was heavy rush. The applicant was examining patients turn by turn in his cabin. The victim went inside the cabin for eye check up and her mother was asked to wait outside. The appellant started checking victim’s eye and asked her to sit on a chair. While examining the victim, the appellant outraged modesty of the victim and caused sexual harassment of the victim. After the examination, the victim came out of the cabin of the appellant and she was weeping, therefore, on inquiry by her mother, she disclosed the incident. On the same night, she lodged report with Wardha (City) Police Station for the offences mentioned above.

5. It is contended that on 16/11/2021 the appellant came to be arrested. On completion of the investigation, charge-sheet came to be filed against the appellant on 16/12/2021. It is further contended that after filing of the charge-sheet the appellant had moved application for bail, which was rejected by the trial Court on 23/12/2021. Hence, the present appeal is filed.

6. It is contended that the appellant is in custody since 16/11/2021. He was thoroughly interrogated by the Investigating Officer. The punishment for the offence punishable under Section 354A is up to three years, whereas punishment for the offence under Section 8 of the POCSO Act is up to five years and for Section 10 it is not less than five years and may extend to seven years. It is contended that there is no possibility of tampering the witnesses. The appellant is a reputed medical practitioner in the town. It is contended that to avoid professional fees the applicant is falsely implicated. It is contended that many persons were present in the hospital. The alleged incident is highly improbable. It is contended that the offences charged are not punishable with either punishment of death or life imprisonment. The sessions trial may not be taken up for hearing at the earliest. Therefore, no purpose would be served by keeping the applicant behind the bars. Therefore, it is prayed that the applicant be released on bail.

7. The notices of this appeal was served on the respondents including State. The learned A.P.P. filed reply on behalf of the respondent/ State. It is contended that there is sufficient material evidence regarding involvement of the appellant in the offences charged against him. It is contended that at the time of alleged incident, CCTV installed in the cabin was not functioning. It is contended that the statements of witnesses are being recorded. Some of the witnesses are staff members of the applicant. If he is released on bail, they may be tampered with. It is contended that there is strong evidence against the appellant and the offence is serious in nature. The victim girl was aged about 14 years. Hence, it is prayed that the application be rejected.

8. The learned counsel for the respondent No.2 submits that the offence is of serious nature. The applicant is reputed medical practitioner of the town. Some of the witnesses are his staff members. Therefore, if he is released on bail he may tamper with the prosecution witnesses. Therefore, it is prayed that the application be rejected.

9. Perused the application, F.I.R. and complaint.

10. That the incident had occurred in the night of 15/11/2021 at about 08:00 p.m. There are specific allegation against the appellant that while examining the victim he has outraged her modesty. The victim had

disclosed the incident to her mother immediately after she came out of the cabin of the appellant. The First Information Report (FIR) came to be lodged within a short period. The appellant had preferred an application for bail, but it was rejected by this Court earlier. He was arrested on 16/11/2021. Since then he is in custody. It is admitted fact that the charge-sheet came to be filed against the appellant on 16/12/2021. The bail application was objected on the ground that the appellant is a reputed medical practitioner and highly influential person in the society, some of the witnesses are his staff members, therefore, he may tamper with the prosecution witnesses.

11. The learned counsel for the appellant submits that if some stringent conditions are imposed upon the appellant, the apprehension of the prosecution would be reduced and also there would not be possibility of tampering of the witnesses at the hands of the appellant. He also submits that the main witnesses are family members of the victim, namely her mother. There is absolutely no possibility of tampering or threatening of the said witnesses. Therefore, there is no harm in enlarging the appellant on bail.

12. The learned counsel for the victim substantiated the arguments submitted by the learned Additional Public Prosecutor.

13. Once the investigation is over then question arises whether the appellant would be available for trial and whether there is possibility of tampering witnesses at his hands. As far as absconding of the appellant is concerned there is no such possibility because he is a medical practitioner since years together. He has deep roots in the society, therefore, there is least possibility of his absconding. As far as tampering of witnesses is concerned, it can be taken care of by imposing some stringent conditions on the applicant. I must mention here that in view of the present pandemic situation, there is no possibility of early hearing of the trial. The investigation is complete and charge-sheet is filed. The respondent No.1- Investigating Agency has not been able to point out that further custody of the appellant is required.

14. Therefore, in my considered view, apprehension of the prosecution and the victim regarding tampering/ threatening of the witnesses can be avoided by putting some stringent conditions on the appellant. With this, I proceed to pass the following order.:

- i) The appeal is allowed.
- ii) The impugned order dated 23/12/2021, passed by Additional Sessions Judge, Wardha in Misc. Criminal Application No. 492 of 2021 is set aside.

- ii) The appellant, having been arrested in connection with Crime No.1448 of 2021, registered with respondent No.1 Police Station, be released on bail on his executing P.R. Bond in the sum of Rs.Twenty Thousand with one solvent surety in the like amount on the following conditions:
- iv) The appellant shall attend Police Station, Wardha (City) once in a month on first Sunday of each month, till the trial is over.
- v) The appellant shall not tamper or threaten any of the prosecution witnesses, in whatsoever manner.
- vi) The appellant shall not leave Wardha city without prior permission of the trial Court.
- vii) The appellant shall attend the sessions trial on each and every date unless granted exemption by the Sessions Court.
- viii) Bail before the trial Court.

The appeal stands **disposed of** in the above terms.

(SURENDRA P. TAVADE, J)