

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.878 OF 2023

SACHIN S/O KASHINATH PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent/State : Mr. S.B. Narwade
Advocate for Respondent No.2 : Mr. Sarang Joshi (Appointed Through
Legal Aid)

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CORAM : S.G. MEHARE, J.

DATED : JULY 12, 2023

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim appointed through legal aid.
2. The applicant is seeking bail in Crime No.12 of 2023 registered with New Mondha Police Station, District Parbhani for the offence punishable under Section 376, 376(a)(b) of the Indian Penal Code and Section 4, 8, 12 of Protection of Children From Sexual Offences Act (for short 'POCSO Act').
3. Learned counsel for the applicant would submit that considering the allegations made in the FIR and the statement of the victim under Section 161 of Cr.P.C., there are no allegations of penetrative sexual assault. Bare allegations of moving the hand on

private part and kissing the victim have been levelled. However, there is statement under Section 164 of Cr. P.C. A drastic improvement was made that made the offence grave. The victim was a child, therefore, there were possibilities of tutoring. Therefore, her earlier statement which is consistent with the FIR and the statement of her sister may be considered. Since the punishment for the offence as alleged in the FIR and the first statement of the victim and her sister is considered, the sections applied in the crime would not attract and at the most Section 9 of the POCSO Act may apply. The punishment for the said offence is not less than 5 years and may extend upto 7 years. Therefore, considering the length of the punishment and the recent view of the Hon'ble Supreme Court, not to keep the accused behind bar where the punishment is provided not more than 7 years, the applicant may be granted bail.

4. Learned APP and learned counsel for the victim have vehemently argued that the victim was 8 years old. She must have been scared; hence, forgotten to narrate about the penetration of finger. When she was normal, she has correctly narrated the incident before the learned Magistrate. Therefore, correct sections have been applied. Considering the age of the victim, it was a serious offence and the girl is unsafe at the hands of the applicant. The offence is serious and grave. Hence, he may not be granted bail.

5. The arguments reveal that there is dispute about the application of the sections. The prosecution and the accused are questioning the aggressiveness of the offence. The FIR and statement of the victim under Section 161 of Cr.P.C. and her sister are consistent. However, her statement under Section 164 of Cr.P.C. has been materially improved. This is not the Court to determine exactly what the incident happened. *Prima facie*, it appears that earlier statements were consistent making no allegations of penetrative sexual assault. Normally in a case of victim who is below 8 years, the Court takes a stringent view not to grant the bail. But each case has its own facts and circumstances. Since there was a confusion about the actual nature of the incident and the investigation has been completed, the Court is of the view that this is a fit case where discretion may be exercised. Learned counsel for the applicant has made a statement that the applicant has already left the locality where the incident happened. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Sachin Kashinath Patil, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with the above crime, on the conditions that he shall not tamper with the prosecution witnesses.

(4)

- (iii) The applicant shall not contact the victim or her relatives or any other witnesses, till conclusion of the trial.
- (iv) The applicant shall attend the trial on each effective date.
- (v) The applicant shall not enter Parbhani except for attending the trial.
- (vi) The Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2/victim as per schedule.

(S.G. MEHARE, J.)