

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

929 BAIL APPLICATION NO.1551 OF 2023

SONU @ PRABHU BALU PADOL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. J.V. Patil
APP for Respondents: Mr. K.S. Patil
Advocate for Respondent no.2 : Mr. Ram Shinde
(appointed Through Legal Aid)

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: September 26, 2023

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PER COURT :-

1. By this application, the applicant seeks regular bail in connection with Crime No.291 of 2023 dated 1.7.2023 registered with Jamner police station, Tq. Jamner, District Jalgaon for the offences punishable under sections 376(2)(n), 376(2)(j) and 506 of the Indian Penal Code, u/s 4,6,8 and 12 of the Protection of Children from Sexual Offences Act (POCSO) and u/s 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Investigation was set in motion on the basis of the information given by victim, who is aged about 14 years. She alleges that she is taking education in the 10th standard at Kapuswadi. The informant alongwith her family members are residing in a field of Jyoti Choudhari. She resides there at nearby place. There is usual conversation between Jyoti

Choudhari and mother of the informant. It is alleged that in the month of December 2022 the informant had been to the house of Jyoti Choudhari where her relative Sonu (present applicant) was sitting. She alleges that accused Jyoti forced her to have conversation with the Sonu. Thereafter, in the month of January, 2023 again Sonu had been to the house of Jyoti Choudhary. Accused Jyoti asked the informant to go inside the house alongwith accused Sonu, where accused Sonu had forcible sex with her. She alleges that similar incidences occurred frequently till April, 2023. It is further alleged that on 25.5.2023 while the informant was talking with accused Sonu (applicant), brother of the informant seen them, slapped her and took home. Thereafter, the informant gave narration of entire story. It is further alleged that after relatives of the informant came to house, they decided to file the report.

3. On the basis of the information crime no.291 of 2022 came to be registered for the aforesaid offences against Jyoti Choudhary and the applicant. In pursuance of the aforesaid crime, the applicant has been arrested on 1.7.2023 and since then he is behind bar. His prayer for grant of bail has been rejected by the Sessions Court vide order dated 11.8.2023. Co-accused Jyoti Choudhary is released on bail by order of the Sessions Court dated 21.7.2023.

4. Learned advocate appearing for the applicant would submit that the applicant is innocent person. Because of the dispute between mother of the informant and his aunt Jyoti, false allegations are made. He would submit that even

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going by the contents of the FIR, first incident took place in the month of December 2022, however, FIR is filed after 8 months. He would further submit that even latest incident is dated 25.5.2023, when family members of the informant came to know about alleged offence. There is huge delay in lodging the FIR. He would further submit that medical evidence that would not support forcible sexual act. He would invite attention of this Court to the observations made by the learned Sessions Judge while granting bail to the co-accused which indicate that previously N.C. has been lodged by mother of the victim against Jyoti Choudhary on account of dispute over the plot. He would further invite attention of this Court to the observations regarding transaction between the mother of the informant and co-accused.

5. Learned A.P.P. as well as learned counsel appearing for the victim vehemently opposes the prayer for grant of bail. They would submit that the victim is hardly 14 years of age. Her consent would be irrelevant. The applicant is aged about 24 years. Therefore, provisions of POCSO as well as IPC would apply in the present case.

6. Having considered the submissions advanced, it is apparent that there are allegations regarding sexual act by the applicant/accused with the victim since December 2022. As such last incident is alleged to have taken place in the month of May, 2023. The informant disclosed about such acts to her family members on or about 25.5.2023. However, the FIR is lodged on 1.7.2023. There is no explanation for such a delay.

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Medical evidence on record is not indicative of any forcible sexual act. Pertinently, there is dispute between co-accused and mother of the informant. Report regarding such dispute was made to the police on 27.5.2023 which is culminated into Non-cognizable case dated 3.6.2023. Even, there are transactions regarding transfer of the plot between co-accused and mother of the victim. In this backdrop, date of filing of the FIR assumes importance. If the incident regarding sexual act committed by the accused on minor informant was known to her family members from 25.5.2023, there is no reason why FIR was not immediately lodged. Apparently, after the dispute over the plot crop up, present complaint appears to have been lodged. In that view of the matter, the narration in the FIR prima facie loses its sanctity. Investigation in the matter is complete. Charge-sheet is filed. Co-accused is already released on bail. Further detention of the applicant would not be necessary. However, subject to stringent conditions, the applicant can be released on bail. Hence, following order.

O R D E R

- i. Criminal Bail Application is hereby allowed.
- ii. The applicant - SONU @ PRABHU BALU PADOL be released on bail in connection with Crime No.291 of 2023 dated 1.7.2023 registered with Jamner police station, Tq. Jamner, District Jalgaon for the offences punishable under sections 376(2)(n), 376(2)(j) and 506 of the Indian Penal Code, u/s 4,6,8 and 12 of the Protection of Children

from Sexual Offences Act (POCSO) and u/s 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on his furnishing PR. and S.B. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand), on the following conditions :-

- a] The applicant shall not tamper with the prosecution evidence in any manner.
- b] The applicant shall not enter in village Kapuswadi till disposal of the trial.
- c] The applicant shall not contact with any witnesses named in the charge-sheet.
- iii. Bail application is accordingly disposed off.
- iv. Since, learned counsel Mr. Shinde is appointed to espouse the cause of respondent no.2 through legal aid, his remuneration shall be paid by the High Court Legal Services, Sub-Committee, Aurangabad as per rules.

(S.G. CHAPALGAONKAR)
JUDGE

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