

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

BAIL APPLICATION NO.1971 OF 2022

PRABHU @ BALU BALIRAM KOHLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant: Mr. Karad Murlidhar S
APP for Respondent/State: Mr. K.S. Patil

...
CORAM : S.G. MEHARE, J.

DATED : JANUARY 11, 2023

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The complainant i.e. mother of the victim, has lodged the report that the victim was missing. The statement of the mother of the victim reveals that they had no complaints against anybody. As per their statement dated 20.07.2022, both of them were unwilling to send and undergo the medical examination of the victim. The statement of the mother of the victim, dated 20.07.2022, was very specific that she got custody of the victim. She left home in a fit of anger. Nobody kidnapped her. After having a specific statement from the victim and her legal custodian/mother, the police, under the misconception of the law, went ahead and produced the victim before the Child Welfare Committee on 22.07.2022. The Child Welfare Committee also held that the victim was in need of care and

protection and directed one Children's Home to admit her. Then she was admitted to the said Children's home as per the letter dated 29.07.2022. That day, she was taken for a medical examination, and a medical examination report of sexual violence was produced. That time, she named the applicant before the medical officer.

3. In the cases under the Protection of Children from Sexual Offences Act, it is noticed that the victims are invariably produced before the Child Welfare Committee for recording the statement of the victim. Unfortunately, the Committee also enquires with the victim/child about the offence and reduces their statement to writing. Such statements are made part of the charge sheets. It is not the object of the Juvenile Justice (Care and Protection of Children) Act 2015. The object of the said Act is to ensure the needs of children and protect their basic human rights fully. The Act is divided into two parts first part deals with the enquiries of offences against the child in conflict with the law by the Juvenile Justice Board headed by the Judicial Magistrate. The second part deals with the care, protection and rehabilitation of children in need, headed by the Chairperson of the Child Welfare Committee. Section 29 of the said Act provides for the power of the Committee. The said section confers the authority/powers upon the Committee to dispose of the cases for care, protection, treatment, development and rehabilitation of children in need of care and protection as well as to provide for their

basic needs and protection. Protection includes protection from harm to the life of a child, even from the parents and relatives. The Committee has jurisdiction exclusively to deal with all proceedings under the said Act relating to children in need of care and protection. The said law does not confer the authority or powers upon the Child Welfare Committee to deal with children except for the care and protection of the child in need.

4. The Protection of Children from Sexual Offences Act provides for recording the statement of the victim before the Judicial Magistrate under section 164 of Cr.PC. There is no provision in the said Act that victims of sexual offences shall be produced before the Child Welfare Committee to record their statement as regards the offence. In the event, the police force the Child Welfare Committee to record such statements, the Committee, in view of its limited powers as confined under section 29 of the J.J. Act, shall refuse to record such statements of the victim about the offence. Producing the victim before multiple authorities not provided for in the law is harassment to the child/victim. Unfortunately, under the misconception of law, the children/victims are produced before multiple authorities. Therefore, it appears necessary to direct the higher authorities dealing with the subject to take the proper steps to protect the interest of the victims of the sexual offence and train the officers concerned.

5. It appears in the present case that the victim/child was safe in the custody of her mother, there was no apprehension to her life from her, and she was not in need of care and protection. However, the police have stretched the matter and registered the offence for which the victim and her mother had no complaints. Not only this, the police went ahead and produced the victim before the Medical Officer on 01.09.2022 and again, the history of offence/incident was recorded in which she made the allegations against the applicant. The conduct of the police seems to be not legal and exceeds the jurisdiction. In view of the facts of the case, the applicant has a good case for bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Prabhu @ Balu Baliram Kohle, 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 Crime No.304 of 2022, registered at Kaij Police Station, District Beed for the offence punishable under Section 363, 376(2)(n) of the Indian Penal Code and Section 4(2), 8 and 12 of Protection of Children From Sexual Offences Act, on the condition that;
 - (a) The applicant shall not tamper with the prosecution witnesses.
 - (b) The applicant shall not contact the victim anyway.

(5)

(c) He shall attend the trial on every effective date of hearing.

(d) He should not involve in a similar crime.

(iii) The Registrar (Judicial) is requested to circulate the copy of this order to all Child Welfare Committees in the State of Maharashtra and the Highest police Authority for proper steps and regulating the investigations of the crime under Protection of Children from Sexual Offences Act in the State.

(S.G. MEHARE, J.)