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11 sr.no. BA 1790.23.odt

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

BAIL APPLICATION NO.1790 OF 2023

**VIKAS OMPRAKASH SINGH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicant : Mr. Shinde Abasaheb D.
APP for Respondents: Mrs. P.J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 5th DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 29 of 2021 registered with Loni police station, Dist. Ahmednagar, for the offences punishable under Sections 363, 375, 376(2)(j)(n), 376(D) of IPC and Sections 3,4,9(L), 10 and 12 of POCSO Act, 2012.

2. The investigation was set in motion On the basis of the information given by Kalpana Kamlakar Navgire, who is the maternal aunt of the victim wherein, she alleges that on 18 January, 2021 the victim has been abducted by unknown culprit, taking disadvantage of her minority. Accordingly, offence under section 363 was registered. It appears that the statement of the victim is recorded on 7 February 2021 wherein, she disclosed her age To be 17 years nine months and that she is educated up to 12th standard. She went to the bus stand Rahuri and called accused Aniket. Both of them collected her 10th standard Board Certificate from PPS. college and then proceeded to Dwarka, where, a room was hired. They stayed in the room and had physical relation.

Again, she proceeded to Surat alongwith accused Aniket and went to the house of grandmother of accused Aniket. Thereafter, accused Chandan Yadav, who is friend of Aniket, arranged for a room, where, she stayed with accused Aniket. They had physical relations during this stay. Thereafter, they proceeded to Wadodara in the State of Gujarat and stayed there at Shrinivas Society till 6.1.2023. Thereafter, they came to Surat and back to Ahmednagar. Contents of the statement depicts that the victim had love affair with the accused Aniket. She accompanied him from 18.1.2021 till 6.2.2021 and during this period, she had physical relations with the accused. It appears that the statement of the victim is further recorded under Section 164 of Cr.P.C. on 9.2.2021, wherein, she repeated the same version as stated in her statement dated 7.2.2021. Pertinently, in the discovery panchanama under Section 27 of the Evidence Act, in respect of accused Aniket he elaborated the version thereby included role of other accused persons. Then victim's supplementary statement came to be recorded on 10.2.2021 wherein she elaborated the events during the period from 18.2.2021 till 6.2.2021. Perusal of the said statement shows that the allegations are incorporated against the applicant and 3 other accused persons, that they took disadvantage of the stay of the victim at their places and ravished her by putting under influence of liquor. It appears that during the course of investigation, the applicant has been arrested on 27.5.2021. Since then, he is behind bars.

4. Mr. A.D. Shinde, learned advocate for the applicant would submit that the applicant has been falsely roped in at the instance of co-accused Aniket. He would submit that although there are similar allegations against accused Aniket, he has been already released on bail.

Mr. Shinde would point out that the initial statement of the victim recorded under Section 161 and 164 of Cr.P.C. is completely silent about the role of the applicant. For the first time, the statement of the victim dated 10.2.2021 and her statement under Section 164 dated 24.2.2021 attributes allegations against the applicant. He would submit that there is no explanation for delay in bringing allegations of guilt against the applicant. He would further point out that the applicant is behind bars for more than 2 and ½ years. The trial is at nascent stage. Even charge is not framed. Indefinite incarceration of the applicant is in contravention of his right to liberty under Article 21 of the Constitution of India. He would submit that the trial would take its own course. Further detention of the applicant need not be continued. The applicant is ready and willing to abide by the conditions for grant of bail.

5. The learned APP as well as the learned advocate for the victim vehemently opposes the prayer for grant of bail. They would submit that although the victim might have accompanied with the accused No.1, subsequently, she was subjected to gang rape by other accused persons taking disadvantage of her minority and the fact that she was much away from the place of her residence. She was helpless and under trauma after suffering such an incident. As such, initially she could not report about the tortures she suffered at the hands of accused persons. However, subsequently she disclosed the details of heinous acts committed by accused persons. The applicant took disadvantage of her situation and forcibly established physical relations with her. They would submit that the evidence in the charge sheet is sufficient to bring home the guile against the applicant for the alleged offence.

6. Having considered the submissions advanced, apparently, the FIR is in respect of the offence punishable under Section 363 of IPC. However, after victim reported to police station, her statement under Section 161 is recorded. In her statement she makes allegations only against accused Aniket. There are no attributions of any act committed by the applicant or any other accused persons. Similar statement of victim recorded on 9.2.2021 is silent about the victim being subjected to gang rape. The allegations are restricted to the extent of role played by accused Aniket. Surprisingly, the victim gave a supplementary statement dated 10.2.2021 and made disclosure about the role played by the applicant and other accused persons while she was residing alone in the room. She alleges that during the period from 24.1.2021 to 28.1.2021, she was subjected to sexual assault by other accused persons. She makes specific averment that in the night of 29.1.2021, the accused persons had gathered in their room. They consumed and liquor and also made her to consume the same. While she was under influence, the accused persons forcibly established physical relations with her.

7. If the aforesaid narration is taken into account, it is apparent that the victim has developed her version every time after recording her first statement dated 7.2.2021. The role of the applicant is brought on record in her statement under Section 164 of Cr.PC. on 24.2.2021. The veracity of her statement would be subject matter of trial. It would not be proper to record any opinion in respect of her conduct at this stage.

8. As pointed out by Mr. Shinde, learned advocate for the applicant, the applicant has been arrested in the month of May 2021. He is behind bars for 2 and ½ years. The learned APP, on instructions, informs that the trial is at nascent stage and even charge is not framed till this date. Apparently, the trial would take its own course. There is

nothing on record to indicate that trial is prolonged at the instance of the applicant. It is trite that indefinite incarceration of the undertrial accused is contrary to the spirit of Article 21 of the Constitution of India. The right to speedy trial is embodied as one of the fundamental rights under Article 21 of the Constitution of India. In this background, it would be harsh to continue further detention of the applicant in the aforesaid crime. Hence, a case is made out for grant of bail, subject to certain conditions.

9.

O R D E R

- (i) The application is allowed.
- (ii) Applicant – Vikas Omprakash Singh, be released on bail on furnishing PB. and S.B. of Rs. 50,000/- (rupees fifty thousand),.with one solvent surety of the like amount, with additional local surety of like amount, in connection with Crime No.29 of 2021 registered with Loni police station, Dist. Ahmednagar, for the offences punishable under Sections 363, 375, 376(2)(j)(n), 376(D) of IPC and Sections 3,4,9(L), 10 and 12 of POCSO Act, 2012 on the following conditions :
 - [a] The applicant shall not tamper with the prosecution evidence;
 - [b] The applicant shall attend each and every effective date of trial before the trial court.
 - [iii] Needless to mention here that the observations made above are on prima facie consideration of the material on record and are made only for the purpose of deciding the application.
 - [iv] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-