

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

902 BAIL APPLICATION NO.1996 OF 2022

VIMAL @ PRIYANKA SUBHASH RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. R.P. Deshpande, Advocate for applicant

Mr. A.M. Phule, APP for respondent No.1

Mr. S.N. Dudhate, Advocate for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th JANUARY, 2023

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973. Applicant has been arrested in connection with Crime No.879/2021 dated 27.08.2021 registered with M.I.D.C. Waluj Police Station, Dist. Aurangabad, for the offence punishable under Section 376(2) (i), 370, 372, 313, 465, 504, 506, 323 read with Section 34 of the Indian Penal Code, 1860. The investigation is complete and charge sheet is filed before learned Special Judge vide Special Case (POCSO) No.419/2021. It will not be out of place to mention here that after disinclination was shown

to grant any relief to the applicant, her bail application No.181/2022 was disposed of as withdrawn by this Court on 02.05.2022.

2 Heard learned Advocate Mr. R.P. Deshpande for the applicant, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. S.N. Dudhate for respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that after the withdrawal of her application under Section 439 of the Code of Criminal Procedure, co-accused Indal Ramchandra Rathod and Sandip Dilip Mali came to be released on bail by this Court on 01.08.2022 and 12.10.2022 in Bail Application No.310 of 2022 and Bail Application No.1385 of 2022 respectively. Therefore, on the ground of parity she is entitled to be released on bail. In fact, the role of the co-accused, who have been released on bail, is more aggravating in nature. The applicant is the step mother of the informant and even after considering the contents of the First Information Report it can be seen that she had never resided in the past along with the present applicant. Only after 05.05.2018 she states that she started residing with her father and the present applicant. The husband of the present applicant had married to the mother of the victim earlier. The biological mother of the victim and sister reside at Mumbai. But the present applicant,

who is having two daughters from the father of the victim, were residing at Ranjangaon since beginning. The paternal uncle and aunt used to reside in the same lane where the father of the victim is residing. Informant states that when she was insisting that she should be admitted to the school, the father as well as present applicant i.e. step mother were refusing and were insisting that she should marry. When she was not giving consent, they used to assault her and abuse her and, therefore, ultimately she gave consent in constraint. The informant has made wild allegations against the father, uncle, step mother and others to the extent that she was sold by them in Gujrat by performing marriage. It is then stated that those persons had committed rape on her and when she made complaint, her father had brought her back to Aurangabad. She states that the present applicant had given her mental harassment. She also make allegations that the applicant had given her pills causing abortion and once again she was stated to have been sold, however, she states that when she had come in contact with Dahiwadi Police Station, at that time, she had lodged a complaint against another person, which was a non cognizable in nature, but at that time she had the opportunity to lodge the complaint but has not and it was in the year 2020. Thus, it can be seen from the contents of the First Information Report that though several times there was opportunity to the respondent No.2 to lodge the report, she has not lodged. Therefore, the delay that has been

caused should be taken as a concocted version. Learned Advocate appearing for the applicant has taken this Court through the entire charge sheet including the statement of respondent No.2 under Section 164 of the Code of Criminal Procedure and pointed out as to how there is nothing against the applicant so as to connect her with the crime. It is observed by this Court in the matter of co-accused that there is no evidence to support the contents of the First Information Report. Under this circumstance, as the applicant is in jail since many days/months she deserves to be released on bail.

4 Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the application and submitted that there is no change in the circumstance. When this Court was declined to grant any relief it was withdrawn and even at that time the entire charge sheet was before this Court. The disinclination was shown after hearing the parties and perusing the documents on record. Therefore, when there is no change in the circumstance, the second application is not maintainable. The role attributed to the co-accused, who are released on bail, is different. In fact, the applicant, who is a lady herself, could not have taken up such act of selling the daughter, though she is a step daughter knowing that she is minor. The contents of the First Information Report are prima facie corroborated in the statement under Section 164 of the Code of

Criminal Procedure and there cannot be a positive evidence regarding sale of a human being. Whatever evidence has been collected is sufficient and, therefore, case is not made out for granting the discretionary relief.

5 At the outset, it has to be observed that from the contents of the First Information Report it appears that a heinous crime has been committed. The relationship is not denied. The informant at the time of incident was admittedly minor. She is the step daughter of the present applicant. She has come with a clear case that prior to 05.05.2018 she had not resided with father and the applicant, who were residing at Ranjangaon even prior to 05.05.2018. At this stage, nothing has been brought on record to show that the minor has some kind of grudge against the father, uncle and the step mother so as to implicate them. It appears that the incident had started from July, 2018 and she says that she was sold by the father and the uncle at village Godal, Dist. Rajkot in Gujrat State. It is stated that she was sold to a lady. The said lady had disclosed that she is a lawyer by profession and the informant was at her place for about a month. She states that when she was staying with the said lady at Gujrat, various persons used to come and rape her. As she had suffered physically the lady to whom she was sold had called informant's father and asked her to be taken back. Thus, she came back to Aurangabad and it is stated that father had given her treatment. But then

she states that she was mentally harassed by the present applicant and the father and again she was then taken to one Sandip Dilip Mali, who was aged 45. It is then stated that her father left at the place of said Sandip Mali and said Sandip Mali had disclosed that he had purchased her for an amount of Rs.4,00,000/-. She has stated that she was there with that person for about two months. During which she was raped and she became pregnant. After she became pregnant, that person had told the father of the victim to take her away and accordingly she came to Aurangabad, where father, paternal uncle and the present applicant had given her pills for abortion. Accordingly, she got aborted but her health deteriorated. Once again it is stated that she was taken by her father and uncle on 20.12.2019 to village Maan, Dist. Satara, whereupon again she was sold Vitthal Gaikwad for Rs.2,00,000/- and marriage was performed with that person. According to her, that person had also committed rape on her, where she had stayed for about 8-9 months. When she told all the facts to her paternal aunt, he wanted to take her back, but due to lock-down she could not. She has stated that on 14.10.2020 the said person with whom her so called marriage was performed had taken her to Dahiwadi Police Station, but then she had lodged complaint against that person only under Section 323, 504, 506 of the Indian Penal Code. She states that thereafter she had gone to Nanded and had given an application for taking action against the accused persons, but when threats were given,

she went to Mumbai. It appears that she has lodged the report ultimately on 27.08.2021.

6 It is to be noted that statement of victim under Section 164 of the Code of Criminal Procedure is on the same line. It depicts active part of the applicant. Not only it is alleged that she has held responsible the husband i.e. father of the informant to sell the girl but also for causing abortion. Her medical certificate though states that there were no signs of use of force, however, it is stated that the sexual violence cannot be ruled out. Definitely, medical check up was after many months and, therefore, it would not have been possible that there would be marks. At the costs of repetition, it can be said that there was no reason for the girl to implicate the applicant, her own father, uncle etc. Now, the uncle has been released on bail by this Court by order dated 01.08.2022. Important point to be noted is that this Court (co-equal Bench) while releasing the paternal uncle has observed that he does not propose to make any prima facie observations as regards veracity of the First Information Report and other material collected during investigation. Since it may have bearing on bail applications of co-accused, it was then observed that the main allegations are against the father of the informant and 'others'. Now, the present applicant would come in 'others'. In respect of co-accused Sandip Mali, he was the person to whom the girl was

allegedly sold out and he has committed rape. Again the co-equal Bench had gone to the merits and assessed the evidence collected against that accused. Since the role of both the applicants is different, it cannot be said that their release on bail should be considered on the ground of parity by this Court. In fact, the present applicant is also having daughters. Therefore, a mother could not have behaved in such a way. No doubt, the allegations against her are yet to be proved. There are statements on record. But, suffice to say that there may not be a direct evidence taking into consideration the allegations. Hence, no case is made out to use the discretion, taking into consideration the heinous crime. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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