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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3367 OF 2021**

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| 1. Keshav Shankar Omble | ... |
| 2. Laxman Baban @ Kondiba Sutar | ... Applicants |
| Vs. | |
| 1. State of Maharashtra | ... |
| 2. Police Inspector, Medha Police Station | ... |
| 3. XXX | ... Respondents |

Mr. Ganesh Gole for the Applicants.

Mr. Y. Y. Dabke APP for Respondent Nos.1 and 2-State.

Ms. Megha Bajoria for Respondent No.3.

CORAM : S. M. MODAK, J.

DATED : 2ND JANUARY 2023

PC:-

1. Heard learned Advocate Shri Gole for the Applicants, learned APP Shri Dabke for Respondent Nos.1 and 2, and learned Advocate Ms. Bajoria for Respondent No.3-complainant.

2. These two Applicants were arrested in connection with C.R. No.111 of 2021 registered at Medha police station on 17th April 2021. It was registered on the complaint of mother of the victim under section 376 of the Indian Penal Code and under section 4, 6, 8 of POSCO Act. Earlier to this offence, there was FIR registered at same police station on 15th April 2021, being C.R.No.109 of 2021 for the offences punishable under section 376 and various sections of the Protection of Children from Sexual Offences (POCSO) Act. In that

FIR, the complainant and victim are different. However, the news has spread about registration of that offence and accordingly, the victim in this matter has disclosed to her mother about sexual assault committed on her by these two Applicants and that is how the present FIR came to be registered. Office of Mhalsa is directed to pay fees to learned Advocate for Respondent No.3-complainant as per rules.

3. Now the charge-sheet is filed. There are two different incidents involving these two Applicants separately but involving the same victim i.e. the mother of first informant.

4. Learned Advocate Shri Gole tried to differentiate in between seriousness of allegations against these Applicants. According to him, against neither of them the offence under section 376 of the Indian Penal Code is disclosed and at the most offence under section 4 of POSCO read with section 3(d) may be disclosed against Applicant No.2 – Laxman Baban @ Kondiba Sutar. It is also submitted that the FIR is lodged in order to tarnish image of these Applicants so as to grab their land. My attention is invited to medical certificate at pages 101 and 104. The findings are contradictory to each other. On page 101, it is mentioned that there is no injury to vagina of victim whereas on page 104, it is mentioned that possibility of rape cannot be ruled out as there is oral sex tried by the accused. The long period undergone by the Applicants is also quoted for grant of bail.

5. There is reliance placed on two orders passed by this Court
(a) case of Ashok Ramchandra Shewalle Vs. The State of Maharashtra and Anr. dated 30th March 2021 in Bail

Application No.3046 of 2019 and

(b) Prem Rajendra Prasad Dube Vs. The State of Maharashtra & Anr. dated 5th May 2022, in Bail Application No.3731 of 2021.

I have perused those orders. In those orders, the learned Single Judge of this Court has given prima facie findings about non application of sections 375 and 377 of the Indian Penal Code.

6. Learned APP and learned Advocate for the complainant opposed bail on ground that allegations are serious and ground of false implication on account of land dispute cannot be considered at this stage.

7. My attention is also invited to the observations made by the Court of Additional Sessions Judge, in the order and more specifically paragraph 4. It mentions that there is threat to minor girl and minor witnesses. They are kept in remand home by their parents for their safety. There is also mention that accused No.2 – Laxman Baban @ Kondiba Sutar is also involved in C.R. No.109 of 2021 registered at Medha police station. There is also contention that section 376 will certainly be applicable in view of provisions of section 375(d) of the Indian Penal Code so far as accused no.2 is concerned.

8. I am inclined to grant bail to Applicant No.1 – Keshav Shankar Ombale only. It is for the reason that there is only allegation that he touched vagina of victim. There is no allegation that he has applied his mouth to vagina of victim. The medical opinion is contradictory as

mentioned above. The version stated by the first informant so far as involvement of Applicant No.1 is concerned, does not suggest any act committed under the provisions of section 375 of the Indian Penal Code. So prima facie offence under section 375 of the Indian Penal Code is not made out. At the same time it cannot be said that act alleged to be committed by him will fall within purview of penetrative sexual assault under section 3 punishable under section 4 of the POSCO Act. So he is entitled to be released on bail. So far as apprehension of the prosecution about threat is concerned, it can be taken care of by putting certain conditions.

9. I am not inclined to grant bail to Applicant No.2 – Laxman Baban @ Kondiba Sutar. It is for the reason that there is allegation against him that he had applied his mouth to vagina of victim. Furthermore, he is also involved in another offence as mentioned above, so he is not entitled for bail. The case alleged against him also fall within purview of section 375(d) of the Indian Penal Code and under section 3 punishable under section 4, section 8 of the POSCO Act..

10. In view of above the following order is passed :

- (a) Applicant No.1 – Keshav Shankar Ombale be released on bail on furnishing personal bond and surety bond of Rs.25,000/- with one or more surety in the like amount. The bail be furnished before the trial Court.
- (b) Applicant No.1 – Keshav Ombale is directed not to threaten prosecution witnesses and give attendance to Medha police station on the first and third Monday from 10 am to 12 noon

Office of Mhalsa is directed to pay fees to learned Advocate for Respondent No.3-complainant as per rules. until completion of the trial.

(c) Application of Applicant No.2 – Laxman Baban @ Kondiba Sutar is rejected.

11. Application is disposed of. Office of Maharashtra State Legal Services Authority is directed to pay fees to learned Advocate for Respondent No.3-complainant as per rules.

(S. M. MODAK, J.)