

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2702 OF 2022

Vishal Santosh Tapare

... Applicant

V/s.

State of Maharashtra and Anr.

... Respondents

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Mr. Ritesh M. Thobde a/w. Mr. Sagar Tambe and Mr. Changdar Shingade, for Applicant.

Ms. Anamika Malhotra, APP for Respondent-State.

Mr. Veerdhawal P. Deshmukh, Appointed Advocate for Respondent No.2.

P.I. - Mr. Milind Patil, Pandharpur Taluka Police Station present.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 30th AUGUST 2023

P. C:-

1. By this Application, Applicant is praying for bail in Crime No. 173 of 2022 registered with Pandharpur Taluka Police Station, Dist-Solapur, for the offences punishable under Sections 376, 376(2)(n) of Indian Penal Code (for short "IPC") and under Sections 4, 8, 12, 21(1), 42 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

2. It is prosecution's case that, victim was repeatedly sexually assaulted by her parental aunt's son – Kiran Davane hence offence was registered against him. Thereafter, victim delivered a male child, she left that child on road. Police found that child on road. In investigation, Police recorded the statement of victim. In supplementary statement recorded by Police, victim took the name of Applicant, stating that when victim was quarantined in Corona period, Applicant sexually assaulted her in the quarantined area. The name of Applicant was added in this crime on supplementary statement made by victim on 17.03.2022.

3. It is the contention of the learned Counsel for the Applicant that initially the name of the Applicant was not mentioned in the FIR, later on his name was added on supplementary statement. In this offence the allegations of sexual assault are made against three persons by the Applicant in supplementary statements. At the time of incident, victim was aged about more than 17 years 7 months. She was aware about the consequences of the act. The relation between Applicant and victim was consensual. Applicant is behind the bar for more than one year, he is 20 years old. He is the earning member of his family. Hence, requested to allow the Application.

4. Learned APP submitted that, there is *prima facie* case against the Applicant. Victim was sexually assaulted by Applicant when she was kept in quarantine ward during Corona. The DNA report of newborn child matches with the DNA of Applicant. If Applicant is released on bail, he may influence prosecution witnesses or may abscond, hence requested to reject the Application.
5. Learned Counsel for Respondent No.2 reiterates the submission of learned APP.
6. I have heard learned Counsel of all parties.
7. Admittedly, in the complaint filed by Applicant dated 10.03.2022, the name of Applicant was not mentioned and later on his name was added. At the time of incident the age of victim was more than 17 years and 7 months. It shows that, she knew about the consequences of the act. The allegations of sexual assault are against three persons. Applicant is behind the bar for more than one year. His further detention is not required.
8. In view of above, I pass following Order:

ORDER

- (i) Applicant be enlarged on bail in C.R.No. 173 of 2022 registered with Pandharpur Taluka Police Station, Dist.

Solapur, on executing P.R.Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

- (ii) Applicant shall attend the concerned Police Station once in a month i.e. on first Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.
 - (iii) Applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.
 - (iv) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
9. The Application is allowed in the aforesaid terms and is accordingly disposed off.
10. All concerned to act on the authenticated copy of this Order.

(SHIVKUMAR DIGE, J.)