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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.677 OF 2022

Sonu @ Dipak Dansingh Singh ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO.46 OF 2022

Noorul Hassan Mehboob Hassan
Nalwar ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

...

Mr. Rahul Arote i/b. Mr. Anil J. Jadhav for the Applicants in
BA/677/2022.

Ms Sana Shaikh with Ms Maya Updeshi, Mr. Pratik Thadani, Ms Kalsum
Shah and Ms Hemal Shah for the Applicant in BA/46/2022.

Ms A.A. Takalkar, APP for Respondent No.1-State.

Mr. Aadesh Konde Deshmukh for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th APRIL, 2023.

P. C. :-

1. These applications are filed by the Applicants under Section 439 of the Cr.P.C. who are facing trial in POCSO Special Case No.845 of 2020 pending on the file of learned Additional Sessions Judge, Greater Bombay. The said case arises from C.R. No.325 of 2020 registered with Mankhurd Police Station, Mumbai, for the offences punishable under Sections 354, 354-A, 363, 376, 376(3), 376-D, 376-A and 506 of the

Indian Penal Code and Sections 6, 10 and 12 of the Protection of Children From Sexual Offences Act, 2012.

2. Heard Mr. Rahul Arote and Ms Sana Shaikh, learned counsel for the Applicants, Ms Takalkar, learned APP for the Respondent No.1-State and Mr. Konde Deshmukh, learned APP for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime came to be registered pursuant to the FIR lodged by the aunt of the victim. The facts narrated in the FIR prima facie reveal that on 31/07/2020 mother of the victim had lodged the FIR against one Dawood Surve for committing rape on her minor daughter under the pretext of marriage. Subsequently, on 08/08/2020 the victim told her aunt that on 29/07/2020 at about 10.30 p.m. while she was returning home after meeting her friend Dawood Surve, three persons, who were travelling in a silver colour Wagon R assured to drop her home. They took her to Vashi Jakatnaka. She has alleged that while she was in the car, the said three persons sexually abused her. They took the car to the petrol pump in Chembur and thereafter proceeded towards Wadala. She has stated that she was raped by all

these three persons in the car and was later dropped at PMGP Road.

4. The statement of the victim recorded under Section 161 as well as 164 of the Cr.P.C. also prima facie reveals that three persons travelling by silver colour Wagon R car, offered her a lift and thereafter took her to Wadala and subjected her to rape. The prosecutrix did not know the perpetrators of crime. In fact, in the statement under Section 164 of the Cr.P.C. she has stated that she had not seen said persons earlier. She had stated that they were referring to each other as Sonu, Babu and Nuru. The records reveal that though these three persons were not known to the prosecutrix, the Investigating Officer has failed to establish the identity of these Applicants through the Test Identification parade. The panchanama dated 08/08/2020 reveals that the prosecutrix was called to the police station and was asked to identify the perpetrators of crime. Such identification is prima facie inadmissible.

5. The prosecution has relied upon the statement of the owner of car No.MH 03CP 7652 wherein he has stated that the Applicant - Dipak was the driver of the said car. Though the Investigating Officer had seized the car wherein the prosecutrix was allegedly raped, no

efforts were made to ascertain whether there were semen stains or any other incriminating material in the car.

6. The prosecution has relied upon the statement of one Ramprasad Shankarlal Regar, who has stated that on 29/07/2020 at 23.00 hours a silver colour car had come to the Fueling Station to fill C.N.G. and that there was one girl sitting in the said car. This witness has not specified the number of the car and he has not identified the persons as well as the girl in the car. There is no other material to show the involvement of these Applicants in the said crime.

7. A minor girl was allegedly gang raped by three persons. The Investigating Officer, who is stated to be of rank of PI, for the reasons best known, has chosen not to establish identity of the accused persons by conducting Test Identification parade. The investigation of such a serious crime is carried out in a most casual and shoddy manner. It is only because of such lapse that the Applicants, who are alleged to have committed such serious crime are ordered to be released on bail. The Commissioner of Police, Mumbai, to personally look into the matter and take necessary action against the erring officer by making necessary entry in his service record.

8. Under the circumstances and in view of discussion supra, the Applications are allowed on the following terms and conditions:-

- (i) The Applicants, who are facing trial in POCSO Special Case No.845 of 2020 pending on the file of learned Additional Sessions Judge, Greater Bombay, are ordered to be released on cash bail in the sum of Rs.30,000/- each for a period of four weeks;
- (ii) The Applicants shall within the said period of four weeks furnish PR bonds in the sum of Rs.30,000/-each with one or two sureties each to the like amount;
- (iii) The Applicants shall keep the Investigating Officer informed of their current addresses and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.
- (iv) The Applicants shall co-operate with the conduct of the trial and attend the trial Court on all dates.

9. The Applications stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)