

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

BAIL APPLICATION NO.828/2022

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SANTOSH SUBHASH CHAVAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Kuldeep Patil i/b. Adv. Saili Dhuru for the applicant.

Ms. A. A. Takalkar, APP for State.

Adv. P. S. Hagare i/b. Adv. R. H. Patil for the complainant.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 30, 2023.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainant.

2. This is an application for bail in respect of the offence punishable under Sections 376(2)(f), 354-A, 354-B of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 5(n), 6, 7, 8, 9(n) and 10 the Protection of Children from Sexual Offences Act, 2012 (hereafter 'the POCSO Act' for short), registered vide First Information Report (FIR) No.1166/2021 with Andheri Police Station.

3. The FIR was registered on November 17, 2021. The incident is alleged to have happened between August 1,

2018 to November 15, 2021. At the relevant time the age of the victim is 16 years and 11 months. The victim is the daughter of the applicant. It is the allegation of the victim that the applicant has committed an act which is an offence punishable under the aforesaid sections of the IPC and the POCSO Act.

4. The statement of the victim is recorded on November 17, 2021, which is at page 30 of the paper-book. In the said statement, it is stated by the victim that the applicant came home drunk whereafter he committed the aforesaid act. The victim was referred to the Department of Psychiatry, Dr. R. N. Cooper Hospital, Mumbai. The history is recorded wherein it is stated that she was in relationship with co-accused-Mithun Vijaykant Chavan. They had consensual intercourse multiple times for four months. Due to some caste issue, her parents were not ready for marriage with the co-accused-Mithun who was 21 years of age. She has further stated that it is the co-accused-Mithun who had asked the victim to register the FIR against her father so that they could be pressurized and therefore, the false case of rape was filed against her father.

5. The DNA report placed on record excludes the present applicant to be the biological father of ex.2 Right femur bone of fetus of the victim. The co-accused- Mithun and the victim are concluded to be the biological parents of ex.2 Right femur bone of fetus of the victim.

6. One incident has been videographed by the victim and the panchanama dated December 19, 2022 has been placed on record. If the said panchanama is read along with the statement of the victim dated November 17, 2021, there is some discrepancy and the possibility of a false implication cannot be ruled out. These are *prime facie* observations.

7. The investigation is complete. The charge-sheet has been filed. The applicant is in custody from November 17, 2021, for a period of more than 1 year and 2 months. There are no criminal antecedents reported against the applicant.

8. It must be noted that the victim's mother has filed an affidavit indicating that the co-accused-Mithun was a good friend of the victim and he was in physical relationship with her daughter. The mother of the victim has stated that the victim informed her that a false case has been registered against the applicant at the instance of the co-accused-

Mithun and has no objection if the bail is granted to the applicant. Taking an over all view of the matter, the applicant can be enlarged on bail. Hence the following order.

ORDER

(a) The application is allowed.

(b) The applicant-Santosh Subhash Chavan in connection with FIR No.1166/2021 with Andheri Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.

(c) The applicant be released on provisional cash bail of Rs.15,000/- for a period of six weeks from today.

(d) The applicant shall report to the Investigating Officer of the concerned police station once in three months on every first Monday of the month between 11.00 a.m. and 1.00 p.m. commencing March, 2023.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) Learned counsel for the applicant makes a statement that the applicant shall not reside in the area where the victim is residing till further orders. Statement is accepted.

9. The application is disposed of.

(M. S. KARNIK, J.)