

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3369 OF 2021**

1. Aniket @ Krishna Ramji
@ Ramchandra Sutar ...
2. Ramji @ Ramchandra Kondiba Sutar ...
3. Laxman Baban @ Kondiba Sutar ...
4. Nikhil @ Aniket @ Chikya
Rajendra Omble ...
5. Vasant Shivram Dhanawade ... Applicants
Vs.
1. State of Maharashtra ...
2. Police Inspector, Medhar Police Station ...
3. XXX ... Respondents

Mr. Rushikesh C. Barge 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

P.C:-

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

2. All these Applicants have been arrested in connection with C.R. No.109 of 2021 registered with Medha police station on 15th April 2021. It is for the offences punishable under section 376, 376(2)(1), 376(2)(n), 376(a)(b) of Indian Penal Code and under sections 3(a)(k)

(d), 4, 5(l)(m), 6 and 8 of the Prevention of Children from Sexual Offences Act, 2012 (POSCO Act). It was on the complaint of one lady XXX. The victim minor girl used to go to house of the first informant for purpose of study. The mother of victim expired long back. Whereas the father of victim is working as a truck driver at Roha. The victim resides at village Mali, Taluka Javali, District Satara. The victim disclosed incident of sexual assault committed by these five Applicants on different occasions. This was disclosed by victim to the first informant on 18th March 2021.

3. In the FIR, the first informant has disclosed about different incidents committed individually by the Applicants. The sum and substance of these allegations is that the Applicants individually used to call the victim on some or other pretext and the Applicants individually used to remove nicker, used to apply their mouth to vagina of victim. Even the Applicants used to ask victim to apply her mouth to private part of the Applicants. Even there is allegation against some of the Applicants that they tried to have unnatural sex.

4. Learned Advocate Shri Barge invited my attention to the statement of concerned witnesses from the charge-sheet. According to him there is variance in between manner of disclosure to the first informant. My attention is invited to disclosure expressed by the first informant in the FIR on the one hand and disclosure expressed by her in statement recorded under section 164 of the Code of Criminal Procedure. According to him, this variance goes to the root of matter and at this stage it can be believed and the Applicants can be granted bail. Additionally, the period for which they are behind bars is also

taken as one of the ground. The interse relationship in between the Applicants is also quoted and their ailment is also quoted.

5. Learned APP and learned Advocate appearing for the complainant opposed the bail and it is submitted that this is not stage to consider variance in between disclosure made by the first informant as mentioned above. My attention is also invited to medical certificate and more specifically page 225. It mentions about rupturing of hymen.

6. By way of reply, learned Advocate Mr. Barge submitted that medical certificate cannot be considered at this stage because victim has not stated above natural intercourse but she has said about unnatural sex.

7. In the FIR dated 15th April 2021, what the first informant has said is that victim has disclosed incident to her and while narrating that she has also said that another victim used to press her chest and they used to play with each other in unnatural manner. Whereas in statement recorded under section 164 of the Code of Criminal Procedure, the first informant has disclosed that she had seen victim of the present offence and victim of the offence registered at C.R. No.111 of 2021 at Medha police station on 18th April 2021, playing with each other in unnatural way.

8. Even though there may be variance as to how the first informant got knowledge about incidents this is not stage to consider and give benefit of doubt. After perusing the manner of incident, it

cannot be said that the Applicants deserves regular bail.

9. If we perused manner of incident, it can certainly be said that the allegations are very serious and all these Applicants on different occasions have repeated similar incident in respect of same victim. The Applicants may plead about lacunas in the allegations stated by victim but at the same time of bail, we have to see prima facie allegations. The Applicants can agitate these points when the trial will be conducted. These are my prima facie observations. Hence, I am not inclined to grant bail to these Applicants and it is rejected. Office of Mhalsa is directed to pay fees to learned Advocate for Respondent No.3-complainant as per rules.

(S. M. MODAK, J.)