

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

BAIL APPLICATION NO. 3778 OF 2021

Manoj Sitam Verma	 Applicant
v/s.	
The State of Maharashtra and anr.	 Respondents

Ms. Preshita Parab i/b. Ms. Tripti Shetty for the Applicant.
Ms. P.N. Dabholkar, APP for the State.
Mr. Lokesh Zade for the Respondent No.2.

CORAM : G.A. SANAP, J.

DATED : 21st DECEMBER, 2023.

P. C. :-

. The Applicant/accused has made this Application for bail under Section 439 of the Criminal Procedure Code, in connection with C.R.No.I-43/2021 registered with Koparkhairane Police Station, Navi Mumbai for the offences punishable under Sections 376, 376(2)(n), 506 of the Indian Penal Code and Sections 5(l), 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. I have heard the learned advocate for the Applicant/accused and the learned APP for the State. I have perused the record and proceedings.

3. The learned advocate for the accused submitted that the accused has been falsely implicated in this case. The learned advocate for the Applicant submitted that as per the DNA report, the accused is excluded to be the biological father of the baby of the victim. The learned advocate for the Applicant pointed out that when the Applicant's bail application was decided by the learned trial Judge on 28/09/2021, the DNA report was not available and this was one of the grounds for rejection of the bail application. The learned advocate for the Applicant submitted that the DNA report does not corroborate the case of the prosecution that the accused was the biological father of the child. The learned advocate for the Applicant pointed out that after receipt of the DNA report, further investigation has not been carried out to trace out the biological father of the child and ultimately the real perpetrator of the crime. The learned advocate for the Applicant submitted that in the teeth of the shaky material on record, the accused cannot be kept behind bars for indefinite period. The learned advocate for the Applicant submitted that the accused is ready to abide by the conditions that may be imposed by this Court.

4. The learned APP submitted that after receipt of the DNA report, which has excluded that the Applicant being the biological father of the

child, no further investigating has been conducted to trace out the real biological father of the child. The learned APP submitted that even if the DNA report is excluded from consideration, the first hand account of incident narrated by the victim as well as her mother, cannot be kept aside while deciding the bail application made by the applicant. The learned APP submitted that there was no reason for the victim to falsely implicate the accused in such a serious crime. The learned APP further submitted that the accused is in a dominant position & therefore, the possibility of pressurizing and threatening the victim and the other witnesses, cannot be ruled out. The learned advocate appointed to represent the Respondent No.2 has adopted the submissions made by the learned APP. The advocate further submitted even though the DNA report is negative, the prosecution can prove the charge against the accused on the basis of the evidence of the victim and her mother.

5. It is seen that when the bail application of the accused was decided by the trial court on 28/09/2021, the DNA report was not available. Undisputedly, as per the DNA report, the accused is excluded to be the biological father of the baby of the victim. It is seen that the victim is concluded to be the biological mother of the child. The

million dollar question for the prosecution now to address as to who is the biological father of the baby of the victim. It is to be noted that on receipt of the DNA report, excluding the accused as the biological father of the child, the Investigating Officer was required to conduct further investigation and to bring the real perpetrator of such serious crime to book. In my view, this approach indicates that the Investigating Officer is not interested to trace the real perpetrator of the crime for the reasons best known to him.

6. Be that as it may, the fact remains that except the bare words of the victim and her mother, there is no other evidence to establish the complicity of the accused in the crime. The DNA report supports the contention of the accused. In view of this DNA report, it is to be inferred that some person other than the accused, was also involved in the crime. His name has not been stated by the victim as well as by her mother. This mystery created in the aftermath of the DNA report, has remained unsolved. In the facts and circumstances, in my view, the accused who was arrested on 08/02/2021, cannot be kept languishing in jail for indefinite period. The accused, in the teeth of the material on record, is entitled to get bail. The apprehension put forth by the learned APP can be taken care of imposing appropriate conditions.

- (a) The Bail Application is allowed.
- (b) The Applicant – Manoj Sitam Verma be released on bail in connection with C.R.No.I-43/2021 registered with Koparkhairane Police Station, Navi Mumbai on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two solvent sureties in the like amount.
- (c) The Applicant/accused shall attend Koparkhairane Police Station, Navi Mumbai on 1st day of every month between 11:00 a.m. and 02:00 p.m.
- (d) The Applicant/accused shall not in any manner directly or indirectly tamper with the prosecution evidence.
- (e) The Applicant/accused shall not directly or indirectly threaten, pressurize or induce the prosecution witnesses and the victim.
- (f) The Applicant/accused shall after his release on bail, provide his residential address and mobile phone number to

the concerned Police Station as well as to the Trial Court within a period of one week.

7. Bail Application stands disposed of in above terms.

8. It is made clear that observations made herein above be construed as an expression of opinion only for the purpose of granting bail and the same shall not in any way influence the Trial Court.

PREETI
HEERO
JAYANI

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PREETI HEERO
JAYANI
Date: 2023.12.22
19:04:25 +0530

(G.A. SANAP, J.)