

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

CRIMINAL BAIL APPLICATION NO. 2786 OF 2022

Dnyaneshwar Gangaram Mane
Age : 61 Years, Occupation : Retired,
R/at : Near Sai Temple, Patan,
Taluka : Patan, District : Satara. ...Applicant

vs.

1. The State of Maharashtra
(Through Patan Police Station,
District : Satara).
2. X.Y.Z. ...Respondents

Mr.Kuldeep Patil i/b. Ms.Suvarna Yadav, Advocate for the Applicant.
Mr.H.J.Dedhia – APP for the Respondent No.1-State.
Mr.Maitreya G. Shukla – Appointed Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.
DATE : 6th MARCH, 2023

P. C. :-

1. Heard learned Advocate Shri.Kuldeep Patil for the Applicant,
Learned Advocate Mr.Maitreya Shukla, Appointed Advocate for the
Respondent No.2 and learned APP Shri.H.J.Dedhia for the
Respondent No.1-State.
2. It is very unfortunate thing that the victim is ravished by so
many persons and there is an allegation against the present

Applicant. There is a certificate which indicates that she suffered from Temporary Disability in relation to her brain to the extent of 25%. It is issued by the Medical Authority – Satara – Maharashtra on 8th November, 2021. Admittedly, the victim is not major.

3. She is being looked after by her mother who is the First-Informant. Her father is not staying with them. The residents of village Satara tried to take disadvantage of the situation and at the instigation of the Accused No.1 – Shweta Kamble, we can say that she was prey to the incident of sexual intercourse.

4. This fact came to light when on 18th February, 2022 at about 8.00 a.m., her mother found her with Rs.300/-. When asked, victim told that the amount is given by the Accused No.1 – Shweta. Thereafter, the victim disclosed her mother various incidents and accordingly FIR is lodged in respect of that act of ravishing her by one Pintya Kaka who is a charge-sheeted Accused.

5. A statement of the victim is recorded on 21st February, 2022 by following precautions laid down as per the provisions of the Protection of Children from Sexual Offences Act, 2012 [“POCSO Act”]. There, she has quoted various instances. Learned Advocate Shri.Kuldeep Patil laid emphasis on the averments in that statement

and the Applicant is not referred in it. For two reasons, he emphasized on that statement. One is, non mention of the name of the Applicant and second is if she is suffering from Temporary Disability, how she could disclose all these details.

6. My attention is invited by learned Advocate for Respondent No.2 to medical certificate issued by the Medical Officer and psychiatrist who certifies that the victim cannot give consent to any valid contract in her capacity. As against this, on behalf of the Prosecution, two circumstances are quoted. One is the reference of name of the Applicant in supplementary statement recorded of the mother of the victim and second is identification of the Applicant in the parade. There is also a reliance on a statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 [“Cr.PC.”].

7. By way of reply, it is contended on behalf of the Applicant that the supplementary statement of the mother is recorded belatedly and there is only stray reference in judicial statement of one peon from the school which does not denote to the Applicant. As the Applicant is resident of the same village and he knows the mother of the victim as from the same school, the identification is challenged.

8. If the victim could not have been suffering from Temporary Disability, certainly the contention of the Applicant could have been accepted. But the fact that she is suffering from certain Temporary Disability, certain leverage has to be granted to her. One does not know when she will refresh her memory and she will not refresh her memory. There is a reliance on a crime detail form on behalf of the Prosecution wherein, it is mentioned that the present Applicant had shown the various places wherein he ravished the victim.

9. For above circumstances, I am not inclined to grant bail. Applicant can take all these pleas before the trial Court. Hence, it is rejected. The trial Court need not be influenced by these observations which are prima facie observations.

10. Learned Advocate for the Respondent No.2 be paid fees as per Rules.

11. Application is disposed of in the aforesaid terms.

12. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]