

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3625 OF 2022

Mangesh Shivaji Bhalchim

.... Applicant

Versus

The State of Maharashtra & Anr.

.... Respondents

Dr. Uday P. Warunjikar a/w Ms. Sonali Chavan and Mr. Aditya P. Kharkar,
Advocate for the Applicant.

Mr. A. A. Palkar, APP for Respondent No.1-State.

Ms. Meghna Gowlani for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th OCTOBER, 2023.

P.C. :

1. By this Application, Applicant is seeking bail in C. R. No.46 of 2021 registered with Otur Police Station, Pune for the offences punishable under Section 376, 354 and 506 of the Indian Penal Code, 1860 (for short “IPC”) and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”).

2. It is prosecution’s case that, on 28th January, 2021 when complainant was present in her house, Applicant had barged in her house and hugged her and expressed his desire to have physical relationship with her. Therefore, the Complainant filed FIR being C.R. No. 39 of 2021 under Section 452, 354, 504 and 506 of the

Indian Penal Code (for short “IPC”) against the applicant. In the said case Applicant was arrested and released on bail. It is alleged that on 3rd February, 2021 at 12:00 p.m. when the Complainant had gone in the field at Kalamjai mal hill for collecting woods at around 1:00 p.m., the present Applicant came near the Complainant and snatched scythe from the hands of the Complainant and on the point of scythe, he raped Complainant and fled from the sight. The Complainant returned home and did not tell about the incident to anyone as she was frightened. On 4th February, 2021 at about 6:00 a.m. the Complainant had gone to the house of Hema Dhonde for bringing cow dung. The Applicant came near the Complainant and caught hold the Complainant 's hand. The Complainant returned back at home and narrated the entire incident to her husband, consequently on 6th February, 2021 complaint was lodged against the Applicant.

3. It is contention of learned counsel for the Applicant that Applicant has been falsely implicated in this case. At the time of incident, the age of the Complainant was more than 17 years & 3 months. Applicant is behind bar for more than 2 years and 6 months. In the medical history given by the Complainant, she has stated that the said sexual intercourse was consensual. Due to family dispute,

name of Applicant has been roped in the present crime. Hence, requested to allow the Application.

4. It is contention of learned counsel for the Respondent No.2 that Applicant had molested the Complainant and after releasing on bail in the said crime he sexually assaulted the Complainant . After sexually assault, again he tried to molest the Complainant. Complainant is below 18 years of age. There is *prima face* case against the Applicant. Hence, requested to reject the application.

5. The learned APP reiterates the submissions of learned counsel for the Respondent No.2.

6. I have heard all learned counsel. Perused FIR and charge-sheet.

7. Admittedly, the FIR was lodged against the Applicant under Section 354 of IPC by the complainant. When he released on bail in that crime within six days, allegedly he sexually assaulted the Complainant on the point of scythe.

8. It is contention of learned counsel for the Applicant that the said sexual intercourse was consensual. As victim was below 18 years of age at the time of incident, her consent is immaterial. Moreover the victim has specifically stated that applicant had forcefully sexually

assaulted her. There is *prima facie* case against the Applicant. Mere, Applicant is behind bar for more than two years cannot be a ground to release him on bail.

9. In view of above, I pass following order.

ORDER

i. Application is rejected.

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)