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

CRIMINAL BAIL APPLICATION NO.3332 OF 2022

Dilip Nanaji Akhade ... Applicant
V/s.
State of Maharashtra And Anr ... Respondents

Mr. Mahendra N. Sandhyanshiv, for the Applicant.

Mr. Pandurang H. Gaikwad, APP for Respondent No.1/State.

Mr. Subhir Sarkar, for Respondent No.2

CORAM : AMIT BORKAR, J.

DATED : JULY 14, 2023

P.C.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 in connection with CR No.I-66/2022 registered with Vadner-Khakurdi Police Station, Malegaon, District Nashik for offences punishable under Sections 376 (3), 376 of the Indian Penal Code, 1860 and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. According to the prosecution, on 27th April, 2022 the victim (age of 3 years 9 months on the date of incident) went at the construction site of the applicant. After an hour around 08:00 pm, when she came back, she was threatened and told the informant that the applicant took her inside his house which was under construction, removed her undergarments and touched her private part and thereafter, told her to come back on the next morning. The informant immediately called her sister and

brother-in-law on cell-phone and narrated the incident. The relatives ascertained about the alleged incident and after considering redness of her private part, report was lodged.

3. The applicant was arrested on 4th May, 2022. The investigating agency has recorded statement the mother of victim under Section 164 of the Code of Criminal Procedure, 1973 and also recorded statements of other witnesses. The investigating agency filed charge-sheet against the applicant. The applicant, therefore, applied before the Special Court for relief under Section 439 of Cr.P.C., which came to be rejected by order dated 22nd August, 2022.

4. According to the learned advocate for the applicant, the informant suppressed the fact of registration of Non-cognizable case. He invited my attention to the said complaint which indicates that on the day of incident i.e. 28th April, 2022 at about 10:46 am the dispute was settled as the report was lodged due to misunderstanding. Therefore, according to him delay in lodging report and considering the age of the applicant, it is not possible that the applicant could have committed such act. He, therefore, prayed for relief under Section 439 Cr.P.C.

5. Per contra, learned advocate for applicant and learned APP invited my attention to the statement under Section 164 wherein, the mother of victim has narrated the incident. According to them, the prosecution case is supported by statement of witnesses, medical examination.

6. I have perused the charge-sheet and other material

placed on record. There is no serious dispute at this stage about the age of victim being 3 years, 9 months and 25 days on the date of incident. The mother of victim in her statement under Section 164 narrated sufficient details of incident. The statement of other witnesses prima-facie support the case of the prosecution. The medical examination does not rule out possibility of sexual assault. Therefore, on overall consideration of material on the record prosecution has made out a prima-facie case.

7. Insofar as the contention of the applicant about the suppression of Non-cognizable case filed on 28th April, 2022 at about 10:46 am is concerned, in my opinion, the facts narrated in the said report supports the prosecution as it indicates the act of applicant to remove undergarments of the victim. Filing of such complaint, on the next day, at this stage, rule out possibility of false implication. Considering the age of the victim and age of applicant along with statement of mother of victim under Section 164 of Cr.P.C. and other material on record, in my opinion, prosecution has been made out a prima-facie case. The applicant therefore, is not entitled to relief under Section 439 of the Code of Criminal Procedure, 1973. The application is rejected. No costs.

(AMIT BORKAR, J.)