



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 626/2023

HARISH S/O. SATYANARAYAN RATHI

VS

THE STATE OF MAH. THR. ITS PSO WASHIM (CITY), TAHSIL AND DIST.
WASHIM AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.M. Ghare, counsel for applicant.

Mr. I.J.Damle, APP for non-applicant No.1/State.

Mr. P.M.Pande, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 18/08/2023

1. The present application is filed for grant of bail under Section 439 of the Code of Criminal Procedure, in connection with crime No. 372/2023 registered under Sections 363, 354, 354-A of the Indian Penal Code and Sections 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'). The applicant is arrested on 12/06/2023 since then he is in jail.

2. The crime is registered on the basis of report lodged by the grandmother of the victim, contending that the victim is four years of age. On 24/05/2023, her daughter-in-law has attended her work in one Saree Center and her two grand daughters were proceeding to attend the Anganwadi

School. At the relevant time, the present applicant lifted the victim girl aged about 4 years and took her in a go-down, and subjected her for non-penetrative sexual assault by touching her private part. The victim cried and therefore, the present applicant left her and she narrated the incident to her grandmother. On the basis of said report, the Police have registered the crime against the present applicant.

3. During the investigation, the investigating officer recorded the statement of the victim, who substantiated the allegations made in the FIR. She was also referred for a medical examination. During the medical examination, injuries are found on her cheek, chest, and abdomen.

4. As per the contention of the present applicant, he is falsely implicated in the alleged offence. In fact, he is not at all concerned with the alleged offence. Now, the investigation is completed and charge-sheet is filed, his further custody is not required. As far as the apprehension raised by the State is concerned, it is contended that the applicant is ready to stay outside the District - Washim and prayed for grant of bail.

5. The said application is strongly opposed by the State on the ground that during the investigation, the investigating officer has recorded the statement of eye witnesses, from which the involvement of the present applicant is revealed. The CCTV footage from the CCTV Unit installed at the said go-down is also obtained which also substantiates the allegation against the present applicant. Thus, there is a prima- facie case against the present applicant, in view of that application, deserves to be rejected.

6. Mr. P.M. Pande, learned counsel for the informant has also reiterated the contention and additionally submitted that the fact that the present applicant is arrested from Kanyakumari needs to be taken into consideration. There is every apprehension that the present applicant will tamper with the prosecution evidence as he and his family members are the most influential persons. In view of that, the application deserves to be rejected.

7. Having heard Mr. A.M.Ghare, learned counsel for the applicant. He submitted that as the investigation is completed and charge-sheet is filed no purpose will be served by keeping the applicant behind bar. As far as the merit of the application is concerned, he submitted that even taking into

consideration the allegation as it is, the offence committed by the present applicant is punishable with imprisonment maximum of three years which may extend up to five years.

8. He further submitted that in light of well settled principle that the 'Bail is rule and Jail is an exception'. Now investigation is completed, no purpose will be served by keeping the present applicant behind bar. The applicant is ready to abide by each and every condition, if this Court imposes any stringent condition on the present applicant and press for grant of bail.

9. In support of his contention, he placed reliance on the order passed by the ***Kerla High Court in the case of Lijo Joy vs State of Kerla and another in bail application No. 5526/2020 decided on 18/09/2020***, wherein the Kerla High Court has considered the fact that the offence committed under Sections 7 and 8 which is punishable with imprisonment of maximum five years. The Kerla High Court has also considered the observation of the Hon'ble Apex Court in the case of ***Chidambaram P Vs Directorate of Enforcement reported in (2019 (16) SCALE 870***, wherein it is observed that the basic jurisdiction relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is

the exception so as to ensure that, the accused has the opportunity of securing fair trial.

He further placed reliance in the order of **Karnataka High Court in Criminal Petition No. 6146/2020- Sri Yashwanth Kumar @ Yashu s/o Mahalinga and State of Karnataka and another**, wherein also, the applicant was facing the prosecution under Section 354(A) of the Indian Penal Code, wherein the Girl was of aged about eight years and the Karnataka High Court considered that the maximum punishment is extendable upto five years and released the applicant on bail.

He also placed reliance in the order of ***Himachal Pradesh High Court in the case of Mitter Dev v/s State of Himachal Pradesh in Cr.MP(M) No. 566/2014 decided on 17/05/2014***, wherein also this aspect of sexual harassment of the minor girl is considered and the applicant was released on bail.

He further placed his reliance on the observation of the Hon'ble Apex Court in the case of ***Sanjay Chandra vs Central Bureau of Investigation reported in (2012) 1 SCC 40***, wherein the Hon'ble Apex Court is considered the basic principle behind the grant of bail and the considerations for grant of bail, and submitted that in view of the basic prin-

principles laid down by the Hon'ble Apex Court, wherein the considerations for grant of bail are laid down, and in view that present applicant be released on bail.

10. Mr. I.J.Damle, learned APP strongly opposed the application by inviting the attention towards the statement of the victim recorded under Section 164 of Cri.PC. as well as the medical certificate issued by the Medical Officer, after examination of the victim and various statements of the witnesses and submitted that from these statements of the witness, it reveals that present applicant has subjected the victim for non-penetrative sexual assault which is a heinous crime. The victim is only four years of age. He also placed before the Court pendrive, wherein the CCTV footage was copied and produced for the perusal of this Court, and submitted that if this fact is taken into consideration, it is crystal clear that the applicant has committed heinous crime, wherein only four years girl is involved. Considering all these facts, the application deserves to be rejected.

11. Learned counsel for the victim reiterated the contention and endorsed the contention of the learned APP. Additionally, he submitted that the victim girl is only four years of age, wherein the

parents are doing the labour work, whereas the present applicant is an influential person, who took the victim girl in an assaulted place and subjected her for non-penetrative sexual assault. The injuries sustained by the victim superficially show the contention of the present applicant behind taking the victim at isolated place. Taking into consideration, these aspects application deserves to be rejected.

12. Having heard learned counsel for the applicant. Perused the investigation papers it reveals from the recitals of the FIR that alleged incident occurred when both small girls were proceeding to attend their Anganwadi School on 24/05/2023 at about 11.00 a.m. The present applicant took the victim girl by lifting her and taking her in a go-down which is an isolated place. As per the allegation he has case the victim girl on her cheek as well as on her chest and on her abdomen.

13. The medical certificate shows that the victim has sustained the injuries like abrasion on the right cheek of 1 x 1 cm and abrasion 1 x 1 cm on the left cheek. The statement of the victim is also recorded under Section 164 of the Cr.P.C. She has narrated the detailed act of the present applicant. Thus, there is prima-facie material against the present applicant to connect him with the alleged of-

fence, the intention of the present applicant is to be gathered from the circumstances which show that the applicant has not only lifted the victim girl when she was proceeding towards her school but also taken her at go-down which is the isolated place and subjected her for non-penetrative sexual assault. The pendrive which was perused by me by witnessing the CCTV footage, it reveals that the present applicant has lifted the victim and forcefully took a kiss on her cheek which resulted into causing injuries on both cheeks. Thus, prima facie case is made out against the present applicant, the allegations are substantiated by the statements recorded during the investigation as well as on the basis of medical certificate.

14. As observed earlier that prima-facie case is made out against the present applicant. The application of the present applicant for grant of bail is to be considered, in the light that now investigation is completed and charge-sheet is filed. Admittedly, the offences alleged are Section 354 and 354-A for which a punishment upto three years is provided. For the offence punishable under Section 7 which is punishable under Section 8 for which also maximum punishment provided is upto five years and also liable to be fine. For the offence punishable under Section 363 also, a punishment upto three

years is provided. Thus, the offences alleged are punishable with imprisonment of three years.

15. The applicant is arrested and since his arrest, he is behind bar. Learned counsel for the applicant placed reliance on the observation of the Hon'ble Apex Court in the case of ***Sanjay Chandra*** referred (supra) wherein the consideration for grant of bail is discussed and laid down. It is observed by the Hon'ble Apex Court that in bail applications, generally, it has been laid down from the earliest time that the object of bail is to secure the appearance of the accused person at his trial by a reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person will stand his trial when called upon. The court owes more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

16. It is further held by the Hon'ble Apex Court that basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the

shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court.

17. In the light of the above observations, if the facts of the present case are considered, admittedly the offence committed by the present applicant is a heinous one. The intention of the present applicant reveals from the circumstances that, he lifted the girl and took her to an isolated place.

18. It is well settled that the gravity of the offence is involvement is likely to induce the applicant to avoid the course of justice. The heinousness of the crime is also to be taken into consideration. Considering that investigation is now completed and the charge sheet is filed. The apprehension is raised by the learned APP as well as learned counsel for the informant that if the present applicant is released on bail, there is the possibility of involvement of the applicant in a similar type of offence. Further apprehension is raised that the applicant is the most influential person and therefore, there is every possibility that he may tamper the prosecution evidence or induce the witnesses. In view of that it is prayed that the application deserves to be rejected.

19. After considering this aspect, the quantum of punishment which is provided for the offence, the investigation is completed and charge-sheet is filed, the further custody of the present applicant is not required. However, in the circumstances in which the alleged incident has taken place, the application deserves to be allowed by imposing stringent conditions. Accordingly, I proceed to pass the following order;

- a) Criminal Application is allowed.
- b) The applicant – Harish Satyanarayan Rathi is released on bail, in connection with crime No. 372/2023 registered under Section 363, 354, 354-A of the Indian Penal Code and Sections 8,10,12 of the Protection of Children from Sexual Offences Act, 2012, on furnishing P.R.Bond of Rs. 30,000/- with one solvent surety of the like amount.
- c) The applicant shall not enter into the jurisdiction of Washim District, except attending the dates in the Court.
- d) The applicant shall not directly or indirectly make any inducement and threat

or promise to any person acquainted with the facts of the present case.

- e) The applicant shall furnish his cell phone number and address with address proof.
- f) The trial is expedite. The learned trial Court shall disposed of the trial within six months.
- g) The prosecution as well as defence counsel shall co-operate with the trial Court to dispose of the trial at the earliest.

JUDGE