

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION (BA) NO.1351/2022
Pintya alias Ananta Vijay Shinde**

..VS..

**State of Mah., thr. Police Station Mahagaon, tahsil Mahagaon, district
Yavatmal and anr**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

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Shri S.M.Bhangde, Counsel for the Applicant.
Ms Falguni Badani, Counsel for Non-applicant No.2/Victim.
Shri I.J.Damle, Additional Public Prosecutor for Non-applicant
No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07/06/2023

PRONOUNCED ON : 09/06/2023

1. This is an application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.478/2021 registered with Mahagaon Police Station, district Yavatmal for offences punishable under Sections 376-A and 376-B of the Indian Penal Code read with Sections 4 and 5(M) and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The applicant is arrested on 18.11.2021 and since then he is in jail.

3. The crime is registered against the applicant on the basis of report lodged by mother of the victim girl, (due to the mandate of the provision, name of the informant is not

mentioned), on allegations that the victim girl, aged about 8 years and six months, is her daughter. On 17.11.2021, when she was present in the house along with the victim girl and her son, the applicant, a resident of the same village, came to her house and promised her two children of giving chocolates and asked them to come along with him. However, the victim girl declined to go along with him. Her daughter, the victim girl, disclosed her that the applicant is not a good person and he took her to his house twice and removed her clothes, pressed her chest, and attempted to insert his private part into her private part. The victim girl also disclosed that due to the said act, she is having pain in her private part. After the said disclosure, the mother of the victim girl had disclosed the said incident to her husband as well as her neighbours and lodged the report against the applicant. On the basis of the said report, the police have registered the crime against the applicant. During investigation, the victim girl was referred to medical examination and her statement was recorded. During her statement also, she narrated the alleged incident before the police as well as the protection officers.

4. As per contentions of the applicant, due to the previous enmity, he is falsely implicated in the alleged offence.

The allegations are not substantiated by medical evidence or any other evidence.

5. Learned counsel Shri S.M.Bhangde for the applicant submits that investigation of the crime is completed and chargesheet is filed. From the entire material on record, it is crystal clear that the applicant is implicated falsely in the alleged offence. As investigation is now complete and chargesheet is filed, further custody of the applicant is not required and, therefore, he be released on bail.

6. Learned Additional Public Prosecutor Shri I.J.Damle for the State, strongly opposes the application on the ground that from the statement of the victim girl and other witnesses, a *prima facie* case against the applicant is made out to show that he had sexually assaulted the victim girl. If the applicant is released on bail, there is every possibility that the applicant will tamper with the prosecution evidence and may not be available for trial. Hence, the application deserves to be rejected.

7. The non-applicant No.2/the victim girl, through her mother, resisted the application on the ground that small girl of eight years was sexually assaulted by the applicant. The medical officer specifically stated that the sexual assault cannot be ruled out even though there is no injury on the private part

of the victim girl. The allegations in the report are sufficient to show that the applicant has attempted to commit penetrative sexual assault on the victim girl. The victim and the applicant are residing in the same village and in the same locality. If the applicant is released on bail, he will tamper with the prosecution evidence and, therefore, she prays that the application be rejected.

8. Heard learned counsel Shri S.M.Bhangde for the applicant; learned counsel Ms Falguni Badani for non-applicant No.2/the victim girl, and learned Additional Public Prosecutor for the State.

9. Learned counsel Shri S.M.Bhangde for the applicant, reiterates the contentions that the allegations are not substantiated by any material which sufficiently shows that the applicant is falsely implicated in the alleged offence due to the previous enmity. He submits that investigation of the crime is completed, chargesheet is filed and, therefore, he submits that further custody of the applicant is not required. As such, learned counsel submits that the applicant be released on bail.

10. Learned counsel Ms Falguni Badani for the victim girl and learned Additional Public Prosecutor for the State vehemently submit that the statement of the victim girl,

supported by medical opinion that sexual assault cannot be ruled out, is sufficient to show the involvement of the applicant. No material is on record to show the previous enmity. They submit that if the applicant is released on bail, there is every possibility that the applicant will tamper with the prosecution evidence.

11. Having heard both the sides and having gone through the material placed before me, it appears that the victim girl was aged about eight years at the relevant time. From the statement of the victim girl and from the statement of brother of the victim girl, it reveals that the applicant called the victim girl to his house on a promise of giving chocolates and disrobed her and subjected her for sexual assault. Admittedly, external injuries are not found on the person of the victim girl. However, medical report shows that sexual assault cannot be ruled out.

12. In view of medical jurisprudence, in young children there are few or no signs of general violence, for the child usually has no idea of what is happening and also incapable of resisting. The hymen is deeply situated and vagina is very small, it is impossible for the penetration of an adult organ to take place. Usually, penis is placed either within the vulva or

between thighs. As such, hymen is usually intact and there may be little redness or tenderness of the vulva. Therefore, there may not be any signs of general violence. Merely because external injuries are not noticed by medical officer that by itself is not sufficient to infer that no such incident has taken place. Though statements under Section 161 of the Code of Criminal Procedure may not be admissible in evidence, the same are relevant in considering *prima facie* case against an accused in an application for grant of bail in case of grave offence.

13. Here, not only the statement of the victim girl but also the statement of her brother discloses that the applicant has called them on a promise of giving chocolates and subjected the victim girl for sexual assault. As per the allegations of the victim girl, the applicant removed her clothes and attempted to insert his private part into her private part and the said act covers under the definition of Section 3 of the POCSO Act which defines penetrative sexual assault.

14. It is well settled that while considering bail applications, certain important factors, like *prima facie* involvement of the accused, nature and gravity of offence and severity of punishment, character, position, and standing of the accused are to be looked into. While exercising discretion,

nature and gravity of circumstances in which offence is committed and likelihood that the accused will win over witnesses are also to be looked into by the court.

15. In the light of the above principles, if the facts and circumstances of the present case are considered, a *prima facie* case is made out against the applicant to show his involvement in the alleged offence. Moreover, the applicant is residing in the same vicinity where the victim girl resides and, therefore, an apprehension that the accused will win over the witnesses cannot be ruled out. Since investigation of the crime is already complete and chargesheet is filed, trial will commence in near future.

16. In this view of the matter, the application deserves to be rejected and is rejected.

The criminal application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!