

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

CRIMINAL APPLICATION (BA) NO. 1402/2022

Muktanand s/o Chintaman Damahe V/s State of Maharashtra 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. R.M.Daga, counsel for applicant.

Mr. A.M. Kadukar, APP for non-applicant No.1/State.

Ms. Falguni Badani, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/08/2023.

1. Heard.
2. The present application is for grant of bail under Section 439 of the Code of Criminal Procedure, 1973, in connection with crime No. 78/2022 registered at Police Station, Tiroda, District Gondia, for the offences punishable under Sections 376(2)(j), 376(2)(n), 376AB, 342, 323 and 506 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'). The applicant is arrested on 23/01/2022.
3. The accusation against the present applicant is that on 21/01/2022, the victim girl aged about 6 years approached her mother and complained about abdominal pain. On inquiry, she disclosed that

at about 2 p.m. on the said day, when she was proceeding to play with her friend, the applicant caught her hand, took her inside the house, and by closing the door disrobing her and touch to his private part to the private part of the victim. It is further disclosed that the said act was repeated by the present applicant, previously also on 3 to 4 occasions. On the basis of said report, the Police have registered the crime against the present applicant.

4. As per the contention of the present applicant, he is falsely implicated in the alleged offence. The complaint by the victim is not supported either by medical evidence or any oral statements of the witness. Now, the investigation is completed and charge-sheet is filed, further custody of the applicant is not required and no purpose will be served by keeping the applicant behind bar.

5. The said application is strongly opposed by the State on the ground that the victim is only six years of age. The allegations against the present applicant is of serious nature. The applicant is residing in the same locality, if he is released on bail he will tamper the prosecution evidence.

6. The learned appointed counsel for the victim also strongly opposed the application on the

same ground that there is apprehension of tampering of the prosecution witnesses, if the applicant is released on bail.

7. Heard learned counsel Mr. Daga for the applicant. He reiterated the contention and invited my attention towards the recitals of the FIR. As per the recitals of the FIR, the victim girl has complained about abdominal pain and also disclosed about the incident.

8. During the investigation, the statement of the victim, another witnesses are recorded. From the statement of the victim, it reveals that she has not alleged regarding the insertion of the object into her private part, it is the case of touch to her private part by the present applicant.

9. Learned counsel Mr. Daga submitted that even considering the case as it is, the offence is not made out under Section 4 of the POCSO Act. Now, the investigation is completed and the charge-sheet is filed. In support of his contention, he placed reliance on a decision of this Court in ***Vikas Vishnu Ghatule V/s State of Maharashtra, reported in 2020 ALL MR (Cri) 3235*** wherein this Court has considered the aspect that accused allegedly abused her sexually by inserting a toothbrush in her private part. The

prosecution case is of no investigation at all, and rest upon oral evidence of mother of victim. The evidence of victim as to the commission of act believable and not following under Section 4 of the POCSO Act. He further placed reliance in the case of ***Sheikh Hafeez @ Bhurya @ Bhuru s/o Sheikh Hasan V/s State of Maharashtra reported in 2018 DGLS (Bom.)121***

10. Per contra, learned APP vehemently submitted that at this stage, the statement of the victim and her disclosure to her mother appears the prima-facie case against the present applicant. Thus, prima-facie case is made out against the present applicant and the application deserves to be rejected. Learned appointed counsel also reiterated the contention and prays for the rejection of the application.

11. Having heard on both the sides, on perusal of the investigation papers it shows that the allegation against the present applicant is that he has touched his private part to the private part of the victim. Admittedly, there is no allegation that the present applicant has inserted his private part and no case of penetrative sexual assault is alleged, either by the mother of the victim girl or through the statement of the victim. The victim is medically examined, and

no external injury or internal injuries are found on the person of the victim.

12. The learned appointed counsel pointed out that the victim was examined on the second day, and the Medical Officer has suspected bleeding, however, there is no positive finding as to whether there have bleeding or not. The victim was medically examined immediately after the report in District Hospital, Gondia, and the Medical Officer has not observed either bleeding or any injury on the person of the victim. On perusal of the various statements also, no case under Section 4 is made out, a bare perusal of the statement of the victim as well as her mother to whom she has made disclosure, show that there is only an allegation about the touch. Now, considering the investigation is completed charge-sheet is filed, further custody of the present applicant is not at all required. No purpose will be served by keeping him behind bar, however, considering the apprehension raised regarding tampering of witnesses, some condition can be imposed on the present applicant. In view of that I proceed to pass following order.

- a. Criminal Application is **allowed**.
- b. The applicant is released on bail, in connection with crime No. 78/2022

registered at Police Station, Tiroda, District Gondia, for the offences punishable under Sections 376(2)(j), 376(2)(n), 376AB, 342, 323 and 506 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.

- c. The applicant shall not enter into village Mandavi, Tah. Tiroda, District Gondia till recording the evidence of the victim.
- d. The applicant shall not induce, threat or promise any witnesses, who are connected with the alleged crime.
- e. The applicant shall furnish his cell phone number and address with address proof.
- f. The learned trial Court shall not influence by the observation of this Court which are made for the purpose of bail.
- g. The fees of the learned appointed counsel be quantified as per the Rules.

JUDGE