



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 BAIL APPLICATION NO. 110 OF 2024

Vitthal Rama Chavan

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Sohail Subhedar h/f N.S.
Ghanekar

APP for Respondent no.1 : Mr. S.K. Shirse

Advocate for Respondent no.2 : Mr. Ajinkya Reddy
(appointed Through Legal Aid)

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 06, 2024

ORDER :-

1. The applicant seeks regular bail in connection with Crime No.158 of 2023, dated 17.10.2023 registered with Fardapur police station, District Chhatrapati Sambhajinagar for the offences punishable under sections 377 of the Indian Penal Code r/w section 3, 4 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act).

2. Investigation has been set in motion on the basis of the information given by father of victim boy aged about 12 years. It is alleged that on 15.10.2023, victim told informant that at about 5.30 hours when victim had been to public toilet, accused called him and handed over Rupees Ten currency note to bring cigarettes. When victim boy returned back with cigarettes, accused was watching obscene videos on his mobile.

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The accused asked victim to watch such videos. Thereafter, accused offered Rupees Ten to the victim and asked him to catch hold his male organ and inserted in victims mouth. Accordingly, subject offence came to be registered.

3. Pursuance to registration of crime, applicant came to be arrested on 18.10.2023. Since then, he is behind bar. His previous bail application, that was moved before filing of the charge-sheet had been rejected by the Sessions Court. Previous bail application filed before this Court was withdrawn after filing of the charge-sheet and successive application was moved before the Sessions Court, which came to be rejected. Hence, this application.

4. Mr. Sohail Subhedar, learned advocate appearing for the applicant submits that applicant has been falsely implicated in the aforesaid crime. The accused had instituted a Civil Suit for perpetual injunction against the informant and others in respect of land Gat no.48 situated at village Ghanegaon Tanda, Tq. Soygaon. The suit has been decreed on 15.7.2023 thereby restraining all the defendants from interfering in applicant's peaceful possession over the suit property. Further, the applicant has filed a complaint dated 17.10.2023 against father of the victim and others regarding assault and threats given by them to him. As such, the applicant has been falsely implicated in the aforesaid crime.

5. Learned A.P.P. as well as Mr. Ajinkya Reddy learned advocate appearing for respondent no.2 vehemently opposes

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the prayer for grant of bail, contending that the offence is serious, punishable with imprisonment for life. The accused and informant are residing in same village, possibility of tampering of evidence cannot be ruled out.

6. Having considered the submissions advanced, it can be observed that alleged incident dated 15.10.2023 has been reported to police on 17.10.2023 at about 22 hours. There is inordinate delay in lodging the FIR. Although, there are allegations against the applicant that may constitute serious offence, statement of victim recorded under section 164 suggests that there is variance in narration as given in the FIR and the statement of victim recorded under section 164 of Cr.P.C. on material particular. Apparently, civil dispute is pending between the informant and applicant wherein decree is passed in favour of the applicant just before few months of lodging the FIR. Even on 17.10.2023 the applicant appears to have lodged the complaint for offences punishable under sections 323, 504, 506 of the IPC against brother of informant and others and immediately thereafter present FIR has been lodged.

7. The sequence of events prima facie depicts that there are consistent disputes between informant and applicant over the landed property. As rightly pointed out by the learned advocate appearing for the applicant even witnesses cited in the charge-sheet are at cross terms with the applicant. In such situation, possibility of false implication cannot be ruled out.

As observed in the aforesaid paragraphs, there is material inconsistency as regards to narration of incident in FIR and statement victim. The applicant is aged about 78 years.

8. The applicant is aged above 70 years of age. The investigation in the matter is complete. Charge-sheet is filed. Applicant is behind bar for almost four months, his further detention would not be necessary. No criminal antecedents to discredit applicant brought to notice of this court. Hence, the case is made out for grant of bail, subject to certain conditions. Hence, the following order.

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant - Vitthal Rama Chavan be released on bail in connection with Crime No.158 of 2023 dated 17.10.2023 registered with Fardapur police station, District Chhatrapati Sambhajnagar for the offences punishable under sections 377 of the Indian Penal Code r/w section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 on his furnishing P.B. & S.B. of Rs.50,000/- (Rs. Fifty Thousand), on the following condition :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every date before trial court and co-operate for early disposal of case.

- iii. Bail application is accordingly disposed off.
- iv. Since, Advocate Mr. Ajinkya Reddy is appointed through the Legal Aid to represent respondent no.2, the High Court Legal Services Sub-Committee, Aurangabad do pay his remuneration as per the Rules.

(S.G. CHAPALGAONKAR)
JUDGE.

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