



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO. 224 OF 2024

Nana Fakira Koli

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. XYZ

..RESPONDENTS

...
Advocate for Applicant : Mr. Syed Azizoddin R.
APP for Respondent/State : Mr. Mukesh K. Goyanka
Advocate for respondent no.2 : Ms. Usha N. Jadhav (appointed)

.....

CORAM : SANJAY A. DESHMUKH, J.
DATED : 5th APRIL, 2024.

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.316 of 2023 registered with Dondaicha Police Station, Dhule, Dist. Dhule, for the offences punishable under sections 376(2)(j), 376(2)(l), 376(1), 376-AB read with 34 of the Indian Penal Code and under sections 4, 6 and 12 of the Prevention of Children From Sexual Offences Act, 2012 and section 3(1)(w)(i)(ii), 3(2)(5-A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. It is averred in the report that there was earlier enmity between the informant and the applicant and that quarrel took place 10-12 days before the incident. It is further averred in the report that on 08.10.2023 when the prosecutrix - 6 years old slow witted girl was in the courtyard of the informant, she went inside the house of applicant. After some time, when the informant came back, she noticed that the prosecutrix was not there. She and her mother-in-law took search of her. She was not found but one neighbourer told that she is in the house of the accused. Then they went to the house of the applicant and knocked the door. At that time, applicant told informant that her daughter is sleeping on the bed. She went there and saw that prosecutrix child was found sleeping on the bed having no knicker. Therefore, informant felt that the applicant might have touched her private part, and therefore, the report is lodged.

3. The learned advocate for the applicant submitted that there is no such direct evidence against the applicant. The applicant is 70 years old. He has no criminal antecedents. Due to the earlier enmity, he is falsely implicated in the crime. It is lastly submitted to grant bail to the applicant.

4. The learned APP for the respondent/State strongly opposed the application. The learned advocate appointed to

represent the cause of respondent no.2 has also strongly opposed the application and pointed out the statements of the witnesses which show that redness was noticed on the private part of the prosecutrix child.

5. Perused the charge-sheet, more particularly the report and the statements of the witnesses. The applicant has roots in the society. He will not flee away from the trial. Charge-sheet is filed. Custody of the applicant is not necessary. Considering the nature of allegation, the applicant is certainly entitled for bail on the basis of principle that the bail is rule and jail is exception. The application, therefore, deserves to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No.316 of 2023 registered with Dondaicha Police Station, Dhule, Dist. Dhule, for the offences punishable under sections 376(2)(j), 376(2)(l), 376(1), 376-AB read with 34 of the Indian Penal Code and under sections 4, 6 and 12 of the Prevention of Children From Sexual Offences Act, 2012 and section 3(1)(w)(i)(ii), 3(2)(5-A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act be released on bail on furnishing personal bond of Rs.50,000/- with one surety of the like amount on following

conditions:-

- a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence in any manner.

III. If any breach of the above conditions is noticed by the trial Court, the trial Court is at liberty to cancel the bail granted to this applicant without further reference to this Court.

IV. Fees of Ms. Usha N. Jadhav, the learned appointed advocate to represent the cause of respondent no.2 shall be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per the rules and schedule.

(SANJAY A. DESHMUKH, J.)

sga