



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 BAIL APPLICATION NO. 327 OF 2024

Madhav Purbaji Solanke

VERSUS

The State of Maharashtra and another

...

Advocate for Applicant : Mr. Salunke Sudarshan J

APP for Respondent No.1: Mr. Satish A. Gaikwad

Advocate for Respondent No.2 : Ms. Shilpa Aurangabadkar

.....

CORAM : SANJAY A. DESHMUKH, J.
DATED : 7th MAY, 2024.

PER COURT :-

1. This is an application for granting bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 151 of 2024 registered with Purna police station, District Parbhani for the offences punishable under Sections 376, 363, 366-A of the Indian Penal Code, 1860 (for short "I.P.C.") and under Sections 4, 6, 8, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012, (for short "POCSO"). His application with similar prayer below Exh.6 in Special Case (POCSO) No. 102 of 2023 came to be rejected by the learned Additional Sessions Judge, Parbhani, vide order dated 2.11.2023.

2. It is averred in the report that the applicant took away the daughter of the informant, who was 18 years and 6 months old. Therefore, missing report was lodged on 29.6.2023. On 5.7.2023,

both the applicant and the daughter of the informant were found at Shirdi. It is further averred in the report that the applicant committed aggravated sexual assault on the child of the informant. Therefore, report was lodged.

3. Learned advocate for the applicant submitted that there is no criminal force for commission of rape against that prosecutrix, whose age is 18 years and 6 months, as stated in the report. The applicant is falsely implicated in the crime. He has roots in the society, the entire investigation is over, the applicant will not flee away from trial, the trial will take a long period. Learned advocate for the applicant is relying upon the authority of this Court in the case of ***Nitin Damodar Dhaberao vs. State of Maharashtra and another, reported in 2024 (2) ABR (Cri.) 503.*** Para 6 of it reads as under:-

“6. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that applicant is arrested on 30.08.2020 and there is no progress in the trial though charge-sheet is filed on 26.10.2020. As far as merit is concerned, admittedly victim is of 13 years of age and her consent is not relevant. However, the statements which are recorded by the Investigation Officer shows that victim has left her house at her own accord on the pretext of bringing the book from friend and not returned back at home. She also joined the company of the present applicant and also admitted her love relationship with the present applicant in her statement. From her statement it reveals that, she stayed along with the present applicant at various places and not made any grievance as she was taken

by the present applicant by using some force. Thus it is apparent that, out of the love affair, she joined the company of the present applicant. The applicant is also of a tender age of 26 years and out of love affair they come together. It seems that, the alleged incident of sexual relationship is out of the attraction between the two young persons and it is not the case that applicant has subjected the victim for a sexual assault out of lust. Considering the fact that, though charge-sheet is filed long back in the year 2020 and there is no progress in the trial and trial will take its own time for final disposal. In view of that, further incarceration of the present applicant is not required and no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions.”

Learned advocate for the applicant lastly prayed to allow the application.

4. Learned A.P.P. for the respondent-State and the learned advocate appointed to represent the cause of respondent No.2 strongly opposed this application and pointed out that the birth certificate of the daughter of the informant at page 24 shows the date of birth as 15.10.2008. Learned advocate for the respondent submitted that considering the age of the victim and the nature of crime, if the applicant is released on bail, he will certainly harass the prosecutrix i.e. the child of the informant again. It is lastly prayed to reject the application.

5. Perused the charge sheet, particularly the statements of witnesses and the report of medical examination of the child of the informant. The evidence of age of child is a matter of evidence. The applicant has roots in the society, he will not flee away from the trial and the trial will take long period. Nobody will dispute the ratio laid in the aforesaid precedential Law. The facts of each case are decisive. The entire investigation of this case is over. Considering the peculiar set of facts that there is no criminal force used against the girl child and the fact that the applicant has no criminal antecedents, the application deserves to be allowed on certain stringent conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No. 151 of 2024 registered with Purna police station, District Parbhani for the offences punishable under Sections 376, 363, 366-A of the I.P.C. and under Sections 4, 6, 8, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012, 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 tamper with the prosecution evidence and shall not pressurize the witnesses, in any manner.

- b) The applicant shall not enter in entire Purna city, district Parbhani, till the conclusion of the trial.
- c) If any breach of the above conditions are noticed by the trial court or the prosecution, the trial court is at liberty to cancel the bail of the applicant without reference to this Court.

6. The fees of Ms. Shilpa Aurangabadkar, learned advocate appointed to represent the cause of respondent No.2 be paid by the High Court Legal Services Sub committee, Aurangabad as per the Rules and the schedule maintained by them.

(SANJAY A. DESHMUKH, J.)

rlj/