



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 BAIL APPLICATION NO. 1430 OF 2024

RAMESHVAR AMBADAS GAIKWAD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Surse Sunil B.

APP for Respondent/s-State : Mr. S. P. Sonpawale.

Advocate for Respondent No.1 : Mr. Radikar Akshay Suresh.

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CORAM : S. G. MEHARE, J.

DATE : 23.09.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for Respondent No.2.

2. The applicant seeks bail in Crime No.185 of 2023, registered with Satara Police Station, District Aurangabad, for the offences punishable under Sections 376-DA, 376(3), 376(2)(J), 376(2)(N), 376(2), 363, 366-A, 201 of the IPC and Sections 4, 5-L, 6, 8, 9-L, 10, 11, 12, 16 of the POCSO Act and Section 66-E, 67-B of the Information and Technology Act.

3. The prosecution has a case that the victim was the minor. The applicant and other co-accused from time to time took her to the lonely places and committed the forceful sex. Since she

was minor, she was not able to explain the incident in detail. However, in her statement, she has narrated the incident in detail. She alleged against the applicant that he was blackmailing her and doing forceful sex with her. The applicant has no reason to have her phone number. However, that phone number was shared by one juvenile co-accused. There were obscene photographs. Therefore, the victim, who was 14 years 10 months old was forced to attend the calls and go to the places where the applicant and other co-accused were calling her.

4. Learned counsel for the applicant would submit that the overall conduct of the applicant raises serious doubt. She had no reason to attend the unknown phone numbers. There was inordinate delay in lodging the report. In one fine morning, she left the home with golden ornaments. Railway police captured her. Her parents called to railway station. She denied to go with them. Therefore, she was produced before the CWC. She is still in the shelter home. The conduct of the victim itself sufficient to believe that she is telling lie. Statement of the parents also reveal that they were taking no action when they learnt about a serious offence committed with their daughter.

Therefore, their statements also raises doubt. Nothing is to be recovered from the applicant. Hence, he may be granted bail.

5. Learned APP and learned counsel for the victim have strongly opposed the application. They would submit that the *modus operandi* of the accused is relevant. In ordinary course, the applicant has no reason to have her phone number and call her at odd hours. In the circumstances, she must be believed that the applicant was blackmailing her as the another co-accused had snapped her obscene photographs. The phone of the accused have been seized and sent to the analyzer. His statement under Section 27 of the Evidence Act corroborates the allegations. Its a part heard matter. Only a few witnesses remained to be examined. If the applicant is released on bail, there may be great apprehension to the victim who is yet not examined, as the muddemal property is awaited. He also argued that the victim was a minor. Therefore, no correct statement at the first instance, from her is expected. When her pressure was released she narrated the true story showing the involvement of the applicant.

6. This Court had granted time to the prosecution to take the instructions about the analysis report. Learned APP submits that the Investigation Officer wrote a letter to the Assistant

Director of Chemical Analyzer and it is yet not received. During the course of argument, he sought further time to contact the higher police authority. It is the job of the Investigating Officer and not of the APP.

7. Perused the charge sheet. Apparently, the report was not promptly lodged. The first statement of the victim reveals that she used to go with a person who was calling her at odd hours though she knew him or not. She was disappearing from her house for all night. This did not happen on a single time but she was leaving house at odd hours regularly. In the ordinary course of nature, it is hard to believe that the parents were unaware of her disappearance. The record reveals that she left her home with golden ornaments from her house. When police detained her, she told that she is going to Asam. She flatly denied to go with her parent. Therefore, she was sent to the shelter home. Her conduct has relevance with the case. Her statement before the C.W.C. Committee is inadmissible. They are not authorize to record the statement of allegations against the co-accused. It is the job of the police only. Obviously when her statement before the Magistrate was recorded, she developed the story. Instead of considering the *modus openradi* as argued against the applicant, the conduct of the

victim is material. The incriminating statement under Section 27 of the Evidence Act by the accused is inadmissible. The prosecution is not sure how much time it would require to produce the C.A. Report. Though the case is partly heard, the prosecution is not able to ensure the speedy trial. However, the apprehension of the prosecution may be guarded by imposing certain conditions. Considering the entire facts and material before the Court, the Court is of the view that the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **RAMESHVAR AMBADAS GAIKWAD** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) The applicant should not tamper with the prosecution witnesses.
 - (b) He should not contact the victim in any mode or manner till the trial is concluded.
 - (c) He should not enter the area where the victim is residing.

- (d) He should not follow the victim any time till the trial is concluded.
- (e) He should attend the trial on each and every effective date.

(S. G. MEHARE, J.)

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vmk/-