

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1526 OF 2024

Rukhaji @ Havshiram Balaji Wagadkar

VERSUS

The State Of Maharashtra And Another

...

Advocate for Applicant : Mr. Amol Ram Joshi

APP for Respondent/State : Mr. A.A.A. Khan

Advocate for Respondent No.2 : Ms. Asha N. Gore (Appointed
Through Legal Aid)

...

CORAM : S.G. MEHARE, J.

DATED : OCTOBER 08, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The applicant seeks bail in Crime No.93 of 2024 registered with Bhokar Police Station, District Nanded for the offences punishable under Section 377 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act' for short).
3. The victim in this case was a six years boy. When his grandmother did not find him, she searched for him. She found the applicant and the victim naked in a room. The applicant put on his clothes and flee away. The victim told the incident to his parents.

The rectal bleeding was noticed. Therefore, he was referred to the hospital. His medical examination was done. There were some injuries on his person. His statement under Section 161 of the Criminal Procedure Code was also recorded. The applicant has also been medically examined. On the basis of the report, the applicant has been arrested in the crime.

4. The learned counsel for the applicant would submit that there are various legal defects in the investigation. The mandate of Section 28 of the POCSO Act with the statement of the victim has not been recorded by the Judicial Magistrate and statement of the child was not recorded by audio-video electronic means. He would submit that nowadays everybody has mobile handset. So, it was possible for the Magistrate or the Police to record the statement of the victim by audio-video electronic means. He further referred to Rule 6(4) of the POCSO Rules, 2020 and argued that the registered medical practitioner did not submit the report of the condition of the child within 24 hours to the SJPU or the local police. Herein the case, the police had referred the victim to the medical officer for examination. So in such a situation, there appears no necessity to inform the SJPU or the local police.

5. He further argued that the letter addressed to the medical officer for medical certificate was issued on 03.04.2024. However, the medical report is dated 02.04.2024. Hence, it raises a

serious doubt. It is the practice to write a letter to the medical officer for supplying the medico legal certificate because before the request, the medical officer prepare the notes for such certificates. So, there appears no any illegality. He also argued that the copy of the statement under Section 164 of the Criminal Procedure Code is not placed on record. It creates a serious doubt that the mandatory provisions of recording the statement under Section 164 of the Criminal Procedure Code has not been complied with. However, the papers shows that the requisition was submitted to the Judicial Magistrate First Class for recording his statement under Section 164 of the Criminal Procedure Code. Thereon, the learned Judicial Magistrate directed the police to produce the witness on 10.04.2024.

6. The learned APP pointed out that the copy of the statement under Section 164 of the Criminal Procedure Code has already been submitted to the concerned Court. Considering his statement, there appears no substance in the arguments of the learned counsel for the applicant that there are legal defects in the investigation. He has also raised an objection that there is no evidence, how the seized articles sent to the chemical analyzer and how those were recovered. However, it appears that he missed the papers of property search and seizure, which discloses that those clothes were seized from the investigation officer and same were sent to the chemical analyzer. There are no antecedents to the discredit of

the applicant. The applicant is innocent. He has been falsely implicated in the crime. There is no cogent and convincing material on the record to show that he was in any way connected with the alleged offence.

7. The learned APP and learned counsel for the victim have strongly opposed the application. They would submit that there are no illegalities in the investigation. *Prima facie* material is available against the applicant. Grandmother of the victim is the witness to the incident. The allegations are corroborated by the medical evidence. It is a serious crime and a child of six year old has been sexually assaulted. Therefore, he may not be granted bail.

8. The legal grounds which the applicant has raised has been answered above. *Prima facie*, there appears no any legal defect as such in the investigation that may be doubted or trial may be vitiated. The allegations of unnatural sexual assault with a child of six years old is corroborated by the medical evidence. There was rectal bleeding. The concerned doctor applicant was treated. The offence is apparently grave. However, the prayer of the applicant to direct the Court to expedite the trial cannot be granted for the reason that it is not the law.

9. For the above reasons, the application stands dismissed.

10. The Secretary, High Court Legal Services Sub-Committee Aurangabad is directed to pay the fees of the appointed counsel for the victim as per schedule.

(S.G. MEHARE, J.)