



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

927 BAIL APPLICATION NO. 1803 OF 2023

RAMESH JAYRAM SANGALE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Shrikant G. Kawade.
APP for Respondent/State : Mr. Satish A. Gaikwad.
Advocate for Respondent No.2 : Mr. Sharad Shinde. (Appointed).
...

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 29th February, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.292 of 2023, registered at Sangamner Taluka Police Station, District Ahmednagar, for the offences punishable under Sections 376AB, 376 (2) (f) and 506 of the Indian Penal Code and Sections 4, 5 (m)(n), 6, 8, 9(m)(n), 10 and 12 of the Protection of Children from Sexual Offences Act (for short "POCSO Act").

3 It is averred in the report by the mother of 9 years victim girl child that on 15th May, 2023 at about 07:30 pm, the youngsters were dancing at the time of *Haldi Sabha* of one marriage. Her

daughter was playing there. After the dinner, her daughter went for urination, but she did not return. At about 10.30 pm, she came with this applicant, who is the nephew of sister-in-law of the informant. That time, her daughter was found frightened and the applicant immediately went away. She saw that her daughter was frightened. Her sister-in-law and her husband inquired with the victim child as to what happened. That time, she told that the applicant said her to come to visit her grandmother. He took her to a house but there she saw that one old aged person was sleeping. Then he took her to one agricultural farm in the dark. There he caught hold her hands and started kissing her. Thereafter, he sat down and removed his underwear and the underwear of victim child and said her that “थोड़ासा करंट लागु दे”. Then the applicant inserted his private part in the private part of the victim child. She suffered. That time, the applicant said her, after marriage her husband will do this activity, her parents were also doing the same, therefore, she is begotten. The applicant also asked the victim child whether she is liking it and he also pressed her breast. Therefore, the report was lodged on second day.

4 The learned counsel for applicant submitted that the applicant is falsely implicated in the crime as there was earlier enmity between the parties. He pointed out that the applicant was assaulted and beaten by the parents of the victim child. Therefore, he lodged

report on 16th May, 2023. Crime No.293 of 2023 was registered against the informant and others. The learned counsel for applicant submitted that now the charge-sheet is filed, the custodial interrogation of the applicant is not required. The applicant is residing at Sonewadi, Taluka Sangamner, District Ahmednagar and therefore, he will not pressurize the prosecution witnesses. It is lastly prayed to allow the application.

5 The learned APP for the State and the learned appointed counsel for respondent No.2 strongly opposed the application and pointed out the statements of witnesses as well as the report of medical examination of the victim child. The opinion is reserved till the CA report is received. However, there was contused lacerated wound (CLW) over the forehead of the prosecutrix and CLW over the head. It is submitted that the applicant is booked for serious crime of rape on girl child, which is an aggravated form of sexual assault as defined in the POCSO Act. It is heinous crime. Considering his age, there is possibility of pressurizing the prosecution witnesses. Therefore, it is lastly prayed to reject the application.

6 Perused the charge-sheet, particularly, the report and the statements of witnesses. The statements of witnesses, particularly, victim child is in consonance with the prosecution case. The applicant

was assaulted after the incident, which shows his subsequent conduct.

7 The report lodged by this applicant shows that after the incident, he was beaten by the informant and her relatives. That is a *prima-facie* material that the informant and her relatives have assaulted the applicant in the anger. There is no reason to make allegations against the applicant about the alleged incident by an innocent child of 9 years old. This shows that our girl children are not safe anywhere. There is *prima-facie* material against the applicant and he is booked for serious crime.

8 In the facts and circumstances of the present case, it would be proper to rely upon the following two authorities:-

I) In ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 Supreme Court Cases 559***, the Honourable Supreme Court in paragraph 22 held as under:

“**22.** As reiterated by the two-Judge Bench of this Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765, it is well-settled that the factors to be borne in mind while considering an application for bail are:-

- (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;

- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail."

II) In ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 Supreme Court Cases 684***, the Honourable Supreme Court in paragraph 6 held as under:

"6. We are constrained to observe that Justice D. S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed, therefore the accused was entitled to bail. This also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life

has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.”

9 Section 5 (m) of the POCSO Act is applicable, which provides severe punishment. As per the amendment it provides rigorous imprisonment for a term which shall not be less than twenty years, which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. As per Section 18 of the POCSO Act i.e. punishment for attempt to commit any offence, one-half of the imprisonment for life or, one-half of the longest term of imprisonment provided for that offence or with fine or with both, is prescribed.

10 It is also not the case of the prosecution that there was ejaculation and therefore, medical evidence of semen is necessary. At this stage, meticulous consideration of evidence is not expected.

However, considering the presumptions under Sections 29 and 30 of the POCSO Act, which saddles burden on the accused to prove his innocence regarding culpable mental state. Thus, there is *prima-facie* serious case against the applicant to which presumptions are attracting. Therefore, considering the object of the POCSO Act and the facts and circumstances of the case, the applicant is certainly not entitled for bail, in view of the ratio and guidelines laid down in the above case laws (cited supra). The bail application, therefore, deserves to be rejected. It is rejected.

11 The learned counsel for applicant submits that the trial may be expedited.

12 This Court has called reports from each of the District and Sessions Court within the jurisdiction of this Court. The report shows that at Sangamner, three cases are expedited by this Court. Considering this aspect, the Trial Court is directed to conclude the trial as early as possible, within one year. The Trial Court shall decide the case by keeping in mind that it is sessions case. Needless to mention that sessions means once it is started, it shall not be stopped. It means that the Trial Court shall conduct the case by keeping dates accordingly without adjourning it like civil suit.

13 It is made clear that all these observations are *prima-facie* in nature for the purpose of deciding the present bail application only and the Trial Court shall not be influenced by the same while concluding the trial.

14 The fees of the appointed counsel be paid through the High Court Legal Services Sub-Committee, Aurangabad as per Rules and schedule.

[SANJAY A. DESHMUKH, J.]

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