



The order dated 06th February, 2024 is corrected as per speaking to the minutes order dated 06th March, 2024.

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

929 BAIL APPLICATION NO. 2335 OF 2023

Rahul Chandu Waghmare.

... Applicant

Versus

The State of Maharashtra and another.

... Respondents

...
Mr. Dhananjay M. Shinde, Advocate for Applicant.

Mrs. Pratibha J. Bharad, APP for Respondent/State.

Mr. Akshay Raosaheb Dhore, Advocate for Respondent No.2

...

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

DATE : 06th February, 2024.

P.C.:

1 Heard.

2 Leave to amend/correct the Sections in the prayer clause.
Amendment be carried out forthwith.

3 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.0210 of 2023, registered with Ardhapur Police Station, District Nanded, for the offences punishable under Sections 376,

376(1), 376(2)(i) of the Indian Penal Code, under Sections 4, 5, 5(m), 5(k), 6 and 8 of the Protection of Children from Sexual Offences Act and under Sections 92 (b)(d) of the Rights of Persons with Disabilities Act, 2016.

4 The informant is the father of the victim child aged 13 years. It is averred in the report that on 25th June, 2023 at about 01:00 pm the informant received a phone call of his wife. She informed the informant that since about 10:00 am the victim child is not tracing out. Therefore, his wife went in the farm of one Baburao Hendre. That time, she found the applicant and the victim child in naked position in the sugarcane crop. She immediately rushed to them, but the applicant ran away alongwith his pant. The victim child was lying there in naked position. She was crying. She was having pains to her private part. The victim child said that she will identify the person who done that act with her. Therefore, the report was lodged.

5 The learned counsel for applicant pointed out the report of medical examination of the victim child. He further pointed out the statements of witnesses recorded by the investigating officer as well as recorded under Section 164 of the Code of Criminal Procedure. He submitted that there is no such injury sustained to the victim child. The applicant is falsely implicated in the crime. Nothing was found on the

spot of incident. It is lastly prayed to allow the application.

6 The learned APP for the State and the learned counsel for respondent No.2 strongly opposed the application and pointed out the statements of witnesses and the report of medical examination of the victim child. Considering the age of the victim child and the nature of crime, it is lastly prayed to reject the application.

7 Perused the charge-sheet, particularly, the report, statements of victim child and her friends as well as the medical examination report of the victim child. The medical examination report of the victim child is negative and it clarifies that there is no any fresh injury present over the body of the victim child and non-penetrative sexual assault cannot be ruled out. The hymen was intact and no any injury is caused to it. Considering all these factual aspects, particularly, the report of medical examination of the victim child, the possibility of alleged aggravated sexual assault is *prima-facie* not establishing from the charge-sheet. Applicant has roots in the society. He will not flee away from the trial. He has no criminal antecedents. The trial will take long period. Considering all these aspects, the application deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.0210 of 2023, registered with Ardhapur Police Station, District Nanded, for the offences punishable under Sections 376, 376(1), 376(2)(i) of the Indian Penal Code, under Sections 4, 5, 5(m), 5(k), 6 and 8 of the Protection of Children from Sexual Offences Act and under Sections 92 (b)(d) of the Rights of Persons with Disabilities Act, 2016, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses.
 - b) The applicant shall not tamper with the prosecution evidence, in any manner.
 - c) The applicant **shall not enter** into village Delub (Bk.), Taluka Ardhapur, District Nanded till the conclusion of trial.

[SANJAY A. DESHMUKH, J.]