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Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1447 OF 2022

Dilip Radhekrishna Soni	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

.....

Ms. Sandhya Mailagir i/b Anil D. Joshi for the applicant
Mr.M.G. Patil, APP for the respondent – State
Mr. Mayur Sanap, appointed advocate for the respondent no.2

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CORAM : PRITHVIRAJ K. CHAVAN, J.

**RESERVED ON : 4th JANUARY, 2024
PRONOUNCED ON : 8th JANUARY, 2024**

P.C.

1. By this application, the applicant prays for his release on bail in connection with C.R. No.235 of 2020 registered with Kapurbawadi Police Station, Dist. Thane for the offence punishable under Sections 375(A), 354, 325, 452, 506 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO” Act). The applicant came to be arrested on 18.08.2020 and is presently lodged in Taloja Central Prison.

2. Briefly stated, the facts are as under:-

3. On 18.08.2020 at about 10.00 a.m. when the victim aged about 15 years was at her home with her sister, the applicant alleged to have trespass into the house and enquired about her parents and also the time as to when they would return. When he realized that the parents of the victim would return in the evening, he immediately took out a knife and threatened the victim by saying “जो मुझे करना है वो करने दे, नहीं तो मैं तुझे मार दुंगा, किसीको पता नहीं चलेगा”. Thereafter, the applicant caught hold of the victim, pressed her breast and also bit her breast. The victim was scared. By that time, the applicant left the house. The victim called her mother on mobile and informed her about the incident. After return of her mother, she gave description of the applicant and, thereafter, a report came to be lodged. An FIR was registered. After the investigation, a charge-sheet was filed against the applicant.

4. Admittedly, the Additional Sessions Judge, Thane, rejected the application for bail preferred by the applicant by an order dated 12.02.2021. The record also reveals that an earlier application for bail preferred on 02.09.2020 also came to be rejected on

28.10.2020. This is the third application.

5. Learned Counsel for the applicant would argue that since there was a dispute between the applicant and the victim's father as the victim's father had borrowed Rs.10,000/- from the applicant, which he was reluctant to refund and, therefore, he had falsely implicated the applicant in this case. It is submitted that the applicant has been incarcerated for more than 3 years, upon whom there are four dependents. He is, therefore, required to be released on bail. It is also submitted that the applicant is not a resident of the area, where the victim and her family reside.

6. On the other hand, learned APP strongly opposed release of the applicant by stating that there is clinching material on record indicating direct nexus between the crime and the criminal.

7. Learned APP has also drawn my attention to the medical report, which corroborates the fact of outraging the modesty of the victim by the applicant and also the sexual assault upon the victim.

8. A bare look at the statement of the victim recorded on the very day of the incident indicates as to how the applicant trespassed

into the house of the victim and after having confirmed the fact that the parents were not at home, outraged the modesty by not only pressing her breast but by biting over there, on the point of a knife.

9. Statement of the victim's sister is consistent in material particulars to that of her statement.

10. Injury Certificate *qua* the victim, who was examined on 18.08.2020 itself reveals that there were multiple bruises over both breast. Tenderness was present over both breast and the injuries were fresh. There is no dispute about the age of the victim, who was a child.

11. Seizure panchanama of the knife which was seized during his personal search reveals that it was a hacksaw blade knife of 17 cms. This material is sufficient to hold that the applicant, with full intention of committing a crime, had trespassed into the house with such a big knife. Had there been resistant from the victim, the possibility of causing serious injury with such a dangerous weapon could not have been ruled out. The offence alleged appears to have been occurred during the broad day light at about 10.30 a.m.

12. In view of all these circumstances, it would not be safe to release the applicant on bail as it will have a psychological impact upon the mind of the victim, who is a resident of the said area. I am conscious of the fact that almost 3 years have elapsed ever since the applicant came to be arrested by the concerned police station. Nevertheless, while rejecting the application for bail, it would be expedient to direct the trial Court to decide and dispose of the case as expeditiously as possible and in any case, within six months from the date of receipt of this order.

13. Consequently, the application is rejected.

14. The Registry shall forward the copy of the order to the trial Court forthwith. In case, the trial is not concluded within six months as aforesaid, liberty to the applicant to pray for his release on bail.

15. The Bail Application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)