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Uday S. Jagtap

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

CRIMINAL BAIL APPLICATION NO. 3315 OF 2022

Lakhan Jaydrath Bhaskar .. Applicant

Vs.

The State of Maharashtra & Anr. .. Respondents

.....

Mr. Aniket Nikam a/w Mr. Dushyant Digamber i/b Mr. Amit Icham
for the applicant

Ms. Anamika Malhotra, APP for the respondent – State

Ms. Vrushali Maindad, appointed advocate a/w Shaheen Kapadia
for the respondent no.2

Mr. K.S. Pathare, API, MIDC Bhosari Police Station, Pune present

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CORAM : PRITHVIRAJ K. CHAVAN, J.

Closed on : 4th April, 2024.

Pronounced on : 8th April, 2024.

P.C.

1. This is an application for bail. The applicant has been arrested by the MIDC Bhosari Police Station, Pune in connection with C.R. No. 469 of 2020 for the offences punishable under Section 376, 354, 354-A, 506 of the India Penal Code and under Sections 3, 4, 7, 8, 11, 12 of the Protection of Children from Sexual Offences Act (for short “POCSO Act”).

2. The prosecution case in nutshell is as under :-

3. The victim was 13 years 5 months old at the relevant time. The incident in question alleged to have occurred on 02.05.2020 at about 11.00 a.m. The victim used to call the applicant as *Mama*. The applicant who is the landlord of the victim's family called her near a public toilet shed and told her that he likes her very much. He, thereafter, touched her inappropriately on her breast and outraged her modesty. An FIR came to be registered against the applicant with the concerned police station. He was arrested on 19.10.2020. The Investigating Officer referred the victim for medical examination. Statement of the mother of the victim and other witnesses came to be recorded. Statement of the victim under Section 164 of the Cr.P.C. also came to be recorded by the Magistrate. After investigation, a charge-sheet came to be filed against him.

4. The applicant has made first unsuccessful attempt to secure bail before the Additional Sessions Judge, Pune, which came to be rejected vide order dated 29th June 2021.

5. I heard Mr. Nikam, learned Counsel for the applicant and the learned APP as well as learned Counsel for the victim.

6. At the outset, Mr. Nikam would argue that there is a delay in registration of the FIR which indicates that it is an after thought case wherein further improvements have been made by the mother of the victim by stating that the victim was also sexually assaulted by the applicant. Mr. Nikam would invite my attention to the medical certificate of the victim which indicates that there were no fresh physical injuries and there were multiple old healed hymenal tears. According to the learned Counsel, the applicant has been falsely implicated in light of the fact that there was an altercation between the victim and the applicant regarding vacation of the room.

7. Ms. Maindad, learned Counsel for the victim appointed through legal aid, strongly opposed the prayer mainly on the ground that the delay had occurred due to the threats extended by the applicant to eliminate the victim. She has also invited my attention to the fact that the victim was subjected to forcible sexual intercourse by the applicant not on one or two but on nine occasions who was just 13 years of age. Apart from the said fact, she invites my attention to the statement recorded under Section 164 of the Cr.P.C.

8. Learned APP echoed in the same tune to that of the learned Counsel for the victim. According to the learned APP, it is a case of continuous sexual exploitation of the victim by the applicant, who took dis-advantage of her tender age and also the fact that her mother was his tenant with no male member in the family.

9. The first statement of the victim dated 19.10.2020 reveals that the applicant had literally threatened her to come near the public toilet and, therefore, the victim who was just 13 years old visited the said place where she was inappropriately touched by the applicant. It is quite possible that due to such tender age, the victim could not explain everything in detail, however, the statement of her mother which came to be recorded thereafter within two days on 21.10.2020 indicates that she was residing separately from her husband along with her children. Admittedly, the applicant is the landlord. Her statement indicates that on 02.05.2020, the applicant threatened and called the victim to come near the public toilet. Since her mother was not at home, it appears that the victim had been to the said spot due to the pressure of threats by the applicant. He had opened a teen shed with a key. Thereafter, he promised to marry with her and then committed forcible sexual

intercourse. He repeated the said act again after 8 to 10 days by threatening that in case the said incident is disclosed, he would defame the family in the society. It appears that the applicant continued his act thereafter on 6 to 7 occasions whenever he noticed the victim alone at home and also realising that victim did not disclose his acts to her mother. Obviously, at such a tender age, it was not expected of the victim that she would narrate the facts immediately to the mother due to the threats of dire consequences alleged to have been given by the applicant.

10. There is some support to the testimony of the victim and her mother from another important independent witness namely Manisha Dhotre, who appears to have stated that the shed where the applicant alleged to have molested the victim belongs to her. She had a key of the lock however, she states that perhaps the applicant had opened the said lock of the shed by using a duplicate key.

11. The Medical Report and the history given by the victim confirms the fact that she had been subjected to forcible sexual intercourse by the applicant. The medical history reads thus :-

“As per history given by victim she is 13 year female with alleged history of sexual assault. Victim knows accused Mr. Lakhan Jaydrath Bhaskar, 35 yr. Male, r/o. Balajinagar owner of their rented house since mid February 2020 when they shifted there, accused used to have non consensual vaginal penetrative intercourse with victim without use of condom. No h/o physical assault / oral / anal intercourse. Total 9 episodes of intercourse at his home and he used to threaten her that if she tells this to anyone he used to tell her that he will kill her family. Now last episode of non consensual vaginal penetrative intercourse occurred in August 2020, they shifted out from accused house in September and then victim told to her mother and then complaint filed.”

12. The medical evidence further reveals that there were multiple old healed hymenal tears. The medical examination of the victim appears to have been conducted on 21.10.2020. The alleged incident appears to have been occurred in the month of May 2020 and thereafter it continued from time to time. Obviously, there could not have been any fresh injuries or fresh tear during her examination. However, the fact remains that there were hymenal tears present.

13. Statement of the victim recorded under Section 164 of the Cr.P.C. confirms the fact as already been stated by the victim and her mother before the police. Indeed, *prima facie*, applicant appears to have taken dis-advantage of the tender age of the victim who was unwary and gullible and subjected her to forcible sexual

intercourse. Even, the trial Court while rejecting the bail application observed that the petitioner was 31 years of age at the relevant time, who was a matured person.

14. Indeed, the offence is quite serious. The contention of Mr. Nikam that there was some altercation between the victim and the applicant is unfathomable as to how a 13 years old girl would have some altercation regarding vacation of the rented room of which her mother was a tenant? At the most, it could have been a dispute between the mother of the victim and the applicant. This could even be the motive for committing the offence. Be that as it may.

15. It is submitted that the victim and her mother are now resident of the same area but not as a tenants of the applicant. It cannot be lost sight of the fact that the applicant is a resident of that area and in case of his release, it would definitely result into an adverse impact upon the psychology and the mind of the victim girl, who must be around 15 to 16 years of age as on today. The chances of influencing, threatening or coercing the victim and her mother are quite possible in light of the fact that there is no male

member in the family of the mother of the victim. It would not be, therefore, safe to grant bail to the applicant in view of the aforesaid facts.

16. Merely because applicant has been incarcerated for some period would not *ipso facto* mean that he is entitled to be released on bail. In view of the peculiar facts and circumstances of this case, while rejecting the application, at the most the trial Court can be directed to frame a charge against the accused and thereafter expedite the trial.

17. Consequently, the application stands rejected.

18. The trial Court shall frame a charge at the earliest and proceed to record the evidence of the witnesses by keeping in mind provisions of Section 309 of the Cr.P.C.

19. The application stands disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)