

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

950 BAIL APPLICATION NO. 1311 OF 2018

Sundar Gangaram Khandekar
Age : 25 yrs. Occu. Service
R/o Shindagi (Kh)
Tq. Ahmedpur, Dist. Latur.

... Applicant
(Orig. Accused No.2)

VERSUS

The State of Maharashtra,
Through Police Station Officer
Ahmedpur Police Station, Pachora,
Dist. Latur.

... Respondent

....

Mr. Niteen V.Gaware, Advocate for Applicant.
Mr. S.D. Ghyal, APP for Respondent-State.

....

CORAM : V.L. ACHLIYA, J.

DATED : 02nd NOVEMBER, 2018

PER COURT:-

1. The applicant-accused no.2 has moved this application seeking release on bail in connection with the offences registered against him U/sec. 376(I)(J), 506 r/w. Section 34 of the Indian Penal Code (for short, 'IPC') and Section 3A and 4 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act') vide Crime No. 395/2017 (135/2017) with Police Station Ahmedpur, District Latur.

2. Heard the learned counsel for the applicant and the learned APP for State. Perused the papers of investigation.

3. By referring the first information report lodged by the prosecution, the learned counsel for the applicant pointed out that the role attributed to the present applicant confines to his presence on the spot while the accused no.1 committed rape on prosecutrix and giving threat to prosecutrix. Learned Counsel submits that in the light of allegations made in F.I.R., no offence u/s 376(I)(J) of IPC as well as Sections 3A and 4 of POCSO Act is attracted against the applicant. He submits that in order to attract the said offences there must be act of sexual assault on the part of the applicant. In this background, the learned counsel submits that looking to the nature of the offence, accusation against the applicant, the role attributed to applicant in commission of offence, status of investigation, the applicant may be enlarged on bail.

4. On the other hand, the learned APP opposed the application with contention that looking to the nature of offence and accusation against the applicant, the applicant not deserves to be released on bail. Learned APP submits that in the statement recorded U/sec. 164 of Cr.P.C., the prosecutrix has stated that both the accused removed her cloths. In the light of subsequent

statement made by prosecutrix, the learned APP submits that there is evidence to connect the applicant with offences U/sec. 3A and 4 of POCSO Act registered against the applicant. Learned APP further submits that in case the applicant is released on bail, there is every likelihood that he may presurried the prosecution witnesses.

5. In order to appreciate the submissions advanced, I have perused the papers of investigation. The first information report lodged by the prosecutrix on the next day of incident reveals that the act of forcibly taking away prosecutrix in the adjoining field and committing act of forcible sexual intercourse has been solely attributed the accused no.1 Gurunath. In the first information report, the prosecutrix has attributed limited role to the applicant and confines to his presence on the spot and causing threat to the prosecutrix and her cousin sister. Both the accused allegedly asked the prosecutrix and her cousin sister Alka not to disclose about the incident anyone from their family. Thus, if we consider the entire case of the prosecution in the light of first information report then, no act of sexual assault is attributed against the applicant. In the statement recorded one week after the incident i.e. on 14.12.2017, the prosecutrix in her improved version as to the incident stated that both the accused removed her cloths.

7. Thus, considering the over all facts of the case, nature of accusation against the applicant and the evidence collected by the prosecution to establish the complicity of the applicant in commission of the offence, I am of the view that the applicant deserves to be released on bail. The investigation in the case is already over and the charge-sheet has been filed on 27.09.2018. The case of the applicant stands on different footing as that of the case of accused no.1 – Gurunath. The act of committing rape has been attributed to accused no.1. In the light of accusation against the applicant, no offence U/sec. 376 of IPC is attracted against the applicant. Hence it is not desirable to keep the applicant behind the bars till the conclusion of the trial. The applicant is aged about 25 years. He has no past record of involvement in criminal activity. So far as the apprehension expressed by the learned APP that in the event of release of the applicant on bail, the applicant may pressurize the prosecution witnesses, I am of the view that the apprehension expressed by prosecution can be addressed by imposing stringent conditions, while releasing the applicant on bail. I am therefore inclined to allow the application and pass the following order:

ORDER

I. The application is allowed.

II. The applicant-accused no.1 Sundar Gangaram Khandekar arrested in Crime No.395/2017 (135/2017) registered with Ahmedpur Police Station, District Latur for committing offences U/sec. 376(I)(J), 506 r/w. Section 34 of the IPC and Section 3A and 4 of the POCSO Act be released on bail on his furnishing bail in the sum of Rs. 40,000/- [Rupees Fourty Thousand] with one or two sureties in like amount on following conditions.

[a] The applicant shall not indulged into any act amounting to pressurising or tampering of prosecution witnesses.

[b] After release on the bail, the applicant shall not enter into the village Kindgi (Kh), Tq. Ahmedpur, Dist. Latur till the conclusion of trial.

[c] Pending investigation and till filing of the charge-sheet, the applicant shall attend the Pachora Police Station on each alternate day in between 4.00 to 6.00 p.m. (except on 07.11.2018) to record his appearance before the officer in-charge of Police Station.

[c] The applicant shall not indulged into any act amounting to pressurizing and tampering of the prosecution witnesses.

[d] The applicant shall attend the Police Station Ahmedpur on last day of each month in between 10.00 a.m. to 11.00 a.m. to record his appearance before the officer in-charge of Police Station till conclusion of the trial.

[e] The applicant shall furnish the names and addresses of his three close relatives with their phone numbers.

8. In the event of breach of any of the conditions of bail by the applicant, the prosecution will be at liberty to move the Court for cancellation of his bail.

9. Bail to be furnished before the trial Court.

10. The application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

Sudhir Rane