HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.815 OF 2018

Shaikh Nisar Ahmed s/o Shaikh Ali,
Age : 35 years, Occu. Labour,
R/o Bharadi, Taluka Sillod,
District Aurangabad **APPLICANT**

VERSUS

The State of Maharashtra **RESPONDENT**

Mr. Patel Shaikh Ashpak Taher, Advocate for
the applicant
Mr. S.D. Ghayal, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 29th AUGUST, 2018

ORDER :

The applicant has prayed for bail in connection with Crime No.53 of 2018, registered in Police Station, Sillod (Rural), District Aurangabad for the offences punishable under Sections 376, 376 (2) (i) (j) (n), 342 of the Indian Penal Code ("IPC", for short) and under Sections 4, 5 (m), 6, 11 (i), 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act", for short).

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2. The mother of the victim girl, aged about six years, lodged an F.I.R. against the applicant on the allegations that on 4th March, 2018, when the victim girl was going to the shop of one Ismail, the applicant called her to his house and gave her Rs.2/- for purchasing chocolate. He then took her inside his house and closed the door thereof. He removed her clothes and that of himself as well. He asked the victim girl to massage his penis. He inserted his fingers into her vagina. He further asked her to suck his penis. Then, after about 2 to 3 days, the applicant again called her to his house and asked her to repeat the same acts. He gave her money for purchasing chocolate and asked her not to disclose about the above mentioned facts to anybody. The informant noticed that the behaviour of the victim girl was abnormal. Apparently, she was seen to be under some mental pressure. She was not taking food properly. Her physical condition was deteriorating. The informant had shown the victim girl to Dr. Shailesh Kale under the belief that she must have got some health problem. On 9th March, 2018, when the informant was giving both to the victim girl in front of her house at about 11.00 a.m., the applicant went there. At that time, the victim girl started crying on seeing the

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applicant. When the informant pacified the victim girl and asked the reason for her crying, she narrated the above mentioned incidents to the informant. The informant then went to the Police Station and lodged the report against the applicant on 10th March, 2018, on the basis of which the above numbered crime came to be registered.

3. The learned counsel for the applicant submits that a false report has been lodged against the applicant. The applicant is an innocent person. He did not commit the alleged acts. There is no medical evidence to support the case of the informant. The applicant is not alleged to have committed rape on the victim girl. The applicant is in jail since 10th March, 2018. He is ready to abide by the conditions that may be imposed by this Court in case is released on bail. He, therefore, prays that the applicant may be granted the relief of bail.

4. The learned A.P.P. strongly opposed the application. He submits that there was absolutely no reason for the informant to lodge a false report against the applicant at the cost of the dignity of the victim girl and her family. The behaviour of the victim girl

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itself was suggestive of something very objectionable that was done with her. There had been a lot of change in her behaviour. She was not behaving normally. After seeing the applicant near her house, she started crying and then only, the heinous crime committed by the applicant came to the light. The statement of the victim girl has been recorded under Section 164 of the Code of Criminal Procedure, wherein also she specifically stated about the above mentioned illegal acts committed by the applicant. The learned A.P.P. submits that there is strong prima facie case made out against the applicant for the above mentioned offences. According to him, considering heinous nature of the offences, the applicant is not entitled to get bail. He, therefore, prays that the application may be rejected.

5. From the statement of the victim girl, prima facie, a strong case is disclosed against the applicant for the offence under Section 3 punishable under Section 4 of the POCSO Act, for which the punishment is imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life and also fine. The statement of the victim girl, prima facie, shows that there was

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penetrative sexual assault in terms of clauses (b) and (d) of Section 3 and aggravated penetrative sexual assault in terms of clause (m) of Section 5 punishable under Section 6 of the POCSO Act, for which the punishment is rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, besides fine amount. Clauses (b) and (d) of Section 375 of the IPC also are attracted to the facts of the present case and therefore, the offence under Section 376 of the IPC also is prima facie disclosed against the applicant. The victim girl is a child of tender age. There is nothing to show that there was any previous rivalry between the applicant and the informant. There was absolutely no reason for the informant to lodge a false report against the applicant. Considering the heinous nature of the crime, alleged against the applicant, I am not inclined to grant bail to him.

6. The observations made in this order, being prima facie in nature, would have limited effect for deciding the present application only and would not influence any other proceeding arising out of the present crime.

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7. In the result, I pass the following order :-

ORDER

The application is rejected and disposed of.

[**SANGITRAO S. PATIL**]
JUDGE

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