

Prashant Suryakant Date vs The State Of Maharashtra on 15 February, 2021

Equivalent citations: AIRONLINE 2021 BOM 612

Author: Prakash D. Naik

Bench: Prakash D. Naik

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1725 OF 2020
WITH
INTERVENTION APPLICATION NO.441 OF 2021

Prashant Suryakant Date	.. Applicant
Versus	
State of Maharashtra	.. Respondent

.....
Mr.Mihir Gheewala i/b. Mr.Santosh G. Pawar, Advocate for the Applicant.

Mrs.M.r. Tidke, APP for the Respondent - State.

Ms.Saziya Mukadam, Advocate for the Intervenor.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 15, 2021.

P.C. :

This is an application for bail under Section 439 of Code of Criminal Procedure, 1973 ("Cr.PC" for short) in connection with C.R. No.424 of 2020, registered with Powai Police Station, Mumbai, for the offences punishable under

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Sections 377, 506 of Indian Penal Code, 1860 ("IPC" for short)

RajeP. RajeP. Aher
Date: and Sections 4, 6, 8 and 12 of Protection of Children from Sexual
Aher 2021.02.24
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+0530 Ofences Act, 2012 (for short 'POCSO Act')). The applicant was
arrested on 21st October, 2020.
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2 The First Informant is the grand mother of the victim boy. According to complainant, victim is aged about 17 years 11 months. The relatives of the complainant are residing in the nearby area of residence of complainant. Complainant)s relatives Suryakant Date and his wife Shubhangi Date were sufering from COVID-19 and they were admitted at Seven Hills Hospital. Their son Prashant (Applicant) was alone at home and hence the family of applicant had requested complainant to send victim to their house. From 20th June, 2020 to 27th June, 2020, the victim boy used to visit the house of accused in the night for sleeping. The applicant was addicted to liquor. The complainant was providing meal to him. The victim went to native place at Chiplun and hence he could not visit the house of applicant/accused. On 2 nd July, 2020, the applicant abused the complainant)s family on account of fact that the victim was not sent to his residence. N.C. complaint was lodged with Powai Police Station, Mumbai, by complainant against the applicant. On 3rd August, 2020, the applicant/accused abused the complainant and others for providing inferior quality meal and assaulted them. He also showed photographs of victim in half pant. N.C. complaint was lodged against the applicant on 3rd August, 2020. The complainant suspected foul play. She called the victim boy from

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lodged N.C. No. 1472 with Powai Police Station,
Mumbai, against victim)s father for offences punishable
under Sections 323 and 504 of IPC. The father of victim
had also lodged N.C. complaint against the applicant on
the same day.

(iii) The FIR was lodged belatedly. The date of actual
incident has not been specified in the complaint or
statements of witnesses.

(iv) Although the alleged incident had occurred during the
period from 20th June, 2020 to 27th June, 2020, the FIR
was lodged on 6th August, 2020.

(v) False story was concocted on account of enmity and
hostility between applicant and the complainant)s
family.

(vi) Medical evidence does not support the case of the
prosecution. Although the victim has alleged that he
was subjected to unnatural sex, the medical evidence is
completely silent and do not corroborate his version.

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(vii) The victim is a boy aged about 17 years and 11 months.
He could have disclosed the incident immediately.

(viii) The investigation is completed and charge-sheet is
filed. The allegation against the applicant are false,
frivolous and baseless.

5 Learned APP submitted that the victim is minor. The offences are of serious nature. Medical evidence may not there, since the victim was examined subsequently. The statement of the complainant and the victim supports prosecution)s case. The version of the applicant cannot be accepted at this stage. The victim)s statement under Section 161 and 164 makes out the offences. The applicant is charged for the offences under Section 377 of IPC as well as under the provisions of POCSO Act. The applicant is attributed the overtact of committing penetrative sexual assault. There is no delay in lodging FIR.

6 Learned Advocate for the Intervenor submitted that the offence is of serious nature. The victim is minor. The accused was aged about 30 years. The victim was subjected to penetrative sexual assault. The accused is cousin of complainant. Section 6 of POCSO Act provides punishment upto imprisonment for life.

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The incident had occurred two months prior to the medical examination, therefore, there cannot be medical evidence. There is no delay in lodging FIR. The complainant in her statement has explained the delay. The victim had gone to Chiplun. After suspecting foul play, the complainant called the victim, and, thereafter, he disclosed the incident to her. Immediately thereafter, FIR was registered. It is further submitted that the statement of the complainant and victim cannot be disbelieved at this stage. The grounds raised in the application for bail, cannot

be accepted. Learned counsel for the Intervenor relied upon the decision of the Supreme Court in the case of State of Punjab v/s. Gurumeet Singh and Others.¹ In the said decision, it was observed that a prosecutrix cannot be put on par with an accomplice. Evidence Act does not required corroboration of evidence in material particular. Nature of corroboration must necessarily depend upon facts and circumstances of each case. Reliance is also placed on the Judgment of the Apex Court in the case of Prasanta Kumar Sarkar Versus Ashish Chatterjee and Others², wherein it was observed that the Court while granting bail, several factors are to be borne in mind, such as whether prima facie case is made out, nature and gravity of accusation,

1 AIR 1996 SC 1393

2 MANU SCC 0916 2010

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severity of punishment in the event of conviction, danger of absconding, likelihood of offence being repeated and reasonable apprehension of witnesses being influenced etc. Learned Advocate also relied upon the Judgment of supreme Court in the case of State of Himachal Pradesh Versus Manga Singh³, wherein it was observed that conviction could be based on testimony of prosecutrix, if it inspires confidence and no corroboration is required, unless there are compelling reason, which necessitates the Court to insist corroboration. Absence of injuries on private part of prosecutrix, can be of no consequence in facts and circumstance of case.

lodged on 6th August, 2020. The alleged incident had occurred during the period from 20th June, 2020 to 27th June, 2020. The victim boy is aged about 17 years and 11 months. The accused is related to the victim. Complaints are fled by both the sides against each other. The complaints were fled prior to registration of FIR. According to complainant, the parents of the applicant were suffering from Covid-19, and they were hospitalized. Since the applicant was alone at home, request was made to the complainant's family to send the victim to his house in the night

3 (2019) 16 SCC 759

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for sleeping. The victim had visited the house during the period from 20th June, 2020 to 27th June, 2020. The victim did not make any complaint to any of the family member or any other person immediately after the incident. According to complainant, he went to Chiplun. The first informant in her complaint has not mentioned the date on which the victim had left for Chiplun. On 3rd August, 2020, NC complaints were fled by both the sides against each other. Thereafter the complainant had called the victim from Chiplun. The victim came to Mumbai on 4th August, 2020 and then disclosed the alleged incident to the complainant. The complainant is the grandmother of the victim. The FIR does not mention the actual date on which the victim was subjected to sexual assault. According to complainant, on 3rd August, 2020, the applicant had abused and assaulted the complainant and others and he had shown the photographs of the victim in half pant and

therefore the complainant suspected of untoward incident and called the victim from Chiplun. The NC complaint with regards to the alleged incident dated 3rd August, 2020, was lodged against the applicant by the complainant for offences under Section 323, 504 and 506 of IPC. The alleged incident had occurred t about 6-30 p.m. the complaint was lodged at 7:30 p.m. Although, according to the complainant, photographs of the victim in half
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pant were shown to the complainant. There is no reference of the such allegation in the NC complaint dated 3rd August, 2020. Thus, as per the version of complainant, the victim was called by her after the said incident and surprisingly the victim was back at Mumbai on 4th August, 2020. It is pertinent to note that the victim is almost one month short of 18 years and although the alleged incident had occurred in June 2020, there was no complaint from him. Statement of victim was recorded on 6th August, 2020. In his statement, he has not given the date of incident. He stated that he had visited the house of the applicant during the period from period from 20th June, 2020 to 27th June, 2020. His supplementary statement was recorded on 8th August, 2020. In the said statement he has stated that the accused had shown him obscene video from his mobile and told him that they should commit similar act. This fact was not disclosed by him to the complainant nor he has disclosed this fact in his frst statement dated 6 th August, 2020. Thus, there is improvement by the victim in his subsequent statement. In the said statement, for the frst time he has mentioned the date when he visited Chiplun. According to

him, he went to Chiplun on 30 th June, 2020 and returned to
Mumbai on 4th August, 2020 at 09:00 p.m. The FIR was thereafter
lodged on 6th August, 2020. The applicant has also lodged NC
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complaint on 3rd August, 2020 against the father of victim for
offences under sections 323 504 of IPC, it is thereafter the FIR
has been registered. The victim was examined by doctors. The
examination was conducted on 7th August, 2020. There were no
injuries on external genitals of the victim boy. There was no
evidence, of tear, anal tone normal and no evidence of mass per
rectum. There is no evidence of discharge and tenderness. The
final opinion of doctors is that there is no evidence of injuries
over the body and there is no injuries over anus and anal region.
The applicant is in custody from 21 st October, 2020. The decision
relied upon by the learned counsel for the intervenor were
delivered in the facts of case. The circumstances existing in the
present case prima facie creates doubt about the case of the
prosecution. Considering the nature of evidence there is no
impediment in granting bail to the applicant-accused.

8 Hence, I pass the following order:

:: O R D E R :

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(i) Bail Application No.1725 of 2020, is allowed;

(ii) Applicant be released on bail in connection with C.R. No.424 of 2020, registered
with Powai Police Station, Mumbai, on executing P.R. Bond in the rpa 11/11 19 ba
1725 2020.doc sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant shall not tamper with the prosecution evidence. The applicant shall not approach the victim or his family members;

(iv) The applicant shall stay out of jurisdiction of Powai Police Station, till further orders. The applicant shall furnish his residential address to the investigating officer;

(v) Applicant shall attend the trial Court on the date of hearing;

(vi) Bail Application No.1725 of 2020, stands disposed of accordingly.

(vii) Interim Application No.441 of 2021, disposed of.

(PRAKASH D. NAIK, J.)