
(2021) 06 BOM CK 0044

In the Bombay High Court

Case No : Criminal Application (BA) No.528 Of 2021

Prashant Prabhakarrrao Borade

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 363, 366A, 376(2), 376(2)(n)(3), 376DA
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6

Citation : (2021) 06 BOM CK 0044

Hon'ble Judges : Vinay Joshi, J

Bench : Single Bench

Advocate : P.W. Mirza, N. P. Mehta

Final Decision : Allowed

Judgement

Vinay Joshi, J

1. Hearing was conducted through Video Conferencing.
2. By this application, the applicant is seeking regular bail in Crime No.294 of 2019 registered at Warud Police Station, District Amravati for the offence punishable under Sections 363, 366-A, 376(2)(n)(3), 376-DA read with Section 34 of the Indian Penal code and Section 4 read with 6 of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act).
3. Earlier the applicant has applied for bail vide Criminal Application (BA) no.1178 of 2019, however this Court has shown non-inclination to grant bail vide it's order dated 15.01.2020. Resultantly, the applicant was permitted to withdraw the bail application and simultaneously, the Trial Court was directed to conclude the trial expeditiously, within a period of one year. Later 25 ba 528.2021 on, again the applicant has applied for bail vide

Criminal Application bearing no.LD-VC No.861 of 2020, however, this Court has refused to grant bail vide its order dated 10.08.2020.

4. Learned Counsel for the applicant while agitating the claim of bail, mainly contended that the victim girl aged 14 years in her initial statement dated 24.06.2019 has not alleged against the applicant about sexual assault. He pointed out that after 15 days, supplementary statement of the victim was recorded, in which she has levelled the allegations. Learned Counsel Shri P.W. Mirza also pointed towards the initial statement of parents of victim wherein they have not alleged anything against the applicant about sexual assault. In fact, the said material was already considered while rejecting the first bail application by this Court.

5. The only convincing point, which I find is that, by the time, the Trial Court has recorded the evidence of five witnesses including the victim girl.

Admittedly, the evidence of Investigating Officer has only remained to be recorded. Learned Counsel for the applicant pointed out that the victim girl

as well as her mother turned hostile meaning thereby they have not supported to the prosecution case. In this scenario, learned Counsel for the

Applicant would urge that obviously, the trial would end in acquittal, therefore, the applicant be released on bail.

6. A perusal of record indicates that after rejection of earlier bail applications, the Trial Court recorded the evidence, meaning thereby rejection was

prior to the 3 25 ba 528.2021 evidence of victim which was recorded on 15.03.2021. Thus certainly, there is material change of circumstance in the

form of victim's evidence. There is no dispute that the victim is the prime witness of prosecution case who has flatly denied the entire allegations

levelled against the applicant.

7. Learned A.P.P. would submit that, now, only evidence of the Investigating Officer has been remained and therefore, at this stage, it is not proper to

release the applicant on bail. As per the record, the prosecution has examined the evidence of five witnesses i.e. the victim, victim's mother, Panch-

witnesses and Medical officer. It is not the case that either the victim or her mother is recalled. The result of the trial is obvious for which it is not

appropriate to make any comments. In the scenario, it is appropriate to consider the changed circumstance for deciding this bail. In current pandemic

situation, the Trial Court's work is hampered and one cannot predict as to how

much time the Trial Court would take to conclude the trial. Learned

Counsel Shri P.W. Mirza submitted that the Trial Court had issued the summons to the Investigation Officer but, he was not served on earlier date.

Certainly, the Trial Court requires to record the evidence of the Investigating Officer then record the statements of the accused, if any. Moreover,

there are some other accused also. It is apparent that, it will take some time to conclude the trial. In the background, that the victim has totally turned

hostile and the other witnesses who are examined are of formal nature, it is inappropriate to detain the applicant behind bar, if furthermore. In that

view of the matter, the application deserves to be allowed, hence, the 4 25 ba 528.2021 following order :

(a) The Criminal Application is allowed.

(b) The Applicant/accused Prashant Prabhakar Rao Borade is released on bail in connection with the Crime No.294 of 2019 registered with Warud

Police Station, District Amravati for the offences punishable under Sections 363, 366-A, 376(2) (n)(3), 376-DA read with Section 34 of the Indian

Penal code and Section 4 read with 6 of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act), on his executing P.R. bond of

Rs.25,000/- with one or two sureties in the like amount.

(c) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also

shall not tamper with the prosecution evidence, in any manner.

(d) The Applicant/accused shall attend each and every date of hearing fixed before the Trial Court.