

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 BAIL APPLICATION NO.1200 OF 2020

SHAHRUKH SHAMAD BEG
VERSUS
STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Chatterji Joydeep
APP for Respondents: Mrs. D.S. Jape
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CORAM : V. K. JADHAV, J.
DATED : 26th OCTOBER, 2020

PER COURT:-

1. The applicant is seeking bail in connection with crime No. I-237 of 2020 registered with Pathardi police station, District Ahmednagar for the offences punishable under Sections 376(2) (I), 354, 504, 506 of I.P.C. and under Section 3, 4, 5 (L), 6, 7, 8, 9 (L) and 10 of the Protection of Children from Sexual Offences Act 2012. His application Exh.4 in Special Case No. 178 of 2020 with similar prayer came to be rejected by the learned Additional Sessions Judge, Ahmednagar vide order dated 23.9.2020.

2. Learned counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. The applicant is in jail in connection with the present crime since 4.5.2020. Learned counsel submits that the victim and the applicant both are Shepard and they used to take their she-goats for grazing purpose in the nearby lands. Learned counsel submits that the victim has made allegations against the applicant for having committed forcible sexual intercourse with her

on earlier two occasions and so far as the last incident, which is allegedly occurred on 2.5.2020, it has been alleged that the present applicant has fallen down the victim on the ground for the same purpose, however, the victim has raised hue and cry and thus the persons nearby the spot gathered there and on seeing them the applicant fled away from the spot. Learned counsel for the applicant submits that during the course of investigation, statement of the victim came to be recorded under Section 164 of Cr.P.C. before the Magistrate, wherein, the victim has not given any reference to the earlier two incidents and on the other hand, made allegations against the applicant for having committed forcible sexual intercourse with her during the course of last incident i.e. the incident dated 2.5.2020. Learned counsel submits that it appears from the medico-legal examination report of sexual violence of the victim that she has not sustained any external injury and that the victim appears to be habituated to the intercourse. Learned counsel submits that as it appears from the allegations made in the complaint so also on perusal of the statement of those villagers, who gathered near the spot, that after seeing those villagers, the applicant ran away from the spot and the victim in order to defend herself raised hue and cry. Learned counsel submits that the applicant is young person having no criminal history. The applicant is having a fixed place of residence. He is ready to abide the conditions, if any, imposed by this court while enlarging him on bail. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that the victim is below the age of 18 years and as such, the consent, if any, on her part is immaterial. Learned A.P.P. submits that as referred in the complaint, on earlier two occasions prior to the last incident, the applicant has committed forcible sexual intercourse with the victim. However, at the time of last incident, since the victim has raised hue and cry, the applicant ran away from the spot. Learned A.P.P. submits that so far as the last incident is concerned, there are eye witnesses to the said incident. There is medico legal certificate which prima facie support the allegations made in the complaint. There is strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that the victim has referred to earlier two incidents. As per her allegations, the first incident has occurred 20 days back prior to lodging of the complaint i.e. on 4.5.2020. It has been alleged that when she was grazing the she-goats, the applicant came there and committed forcible sexual intercourse with her. It is pertinent to note that even though the applicant allegedly committed forcible sexual intercourse with the victim, she has not disclosed the incident to her mother. So far as this incident is concerned, there are no allegations about any threats given by the applicant to the victim. It further appears that some 10 days prior to lodging of the complaint, the applicant allegedly repeated the same act,

however, the victim has not even disclosed the said incident to her mother.

5. So far as the last incident dated 2.5.2020 is concerned, as per the allegations made in the complaint, there was an attempt on the part of the applicant to commit forcible sexual intercourse, however, the victim has raised hue and cry and therefore, the villagers gathered there. On perusal of the statements of the said villagers, it appears that on seeing them, the applicant ran away from the field and thereafter the victim has raised hue and cry.

6. Apart from this, in the statement of the victim recorded by the Magistrate under Section 164 of Cr.P.C., the victim has not made allegations about earlier two incidents. On the other hand, she has made allegations against the applicant to the effect that in the month of May the applicant has caught hold of her hand, fallen down on the ground, removed her clothes and committed forcible sexual intercourse with her. It is pertinent to note that there is no reference to the hue and cry raised by the victim nor any reference to the villagers gathered on account of her hue and cry on the spot and that those villagers have seen the applicant fleeing away from the spot. So far as the statement of the victim recorded under Section 164 of Cr.P.C. by the Magistrate is concerned, the same is contrary to the allegations made in the F.I.R. There are no allegations in the F.I.R. against the applicant for having committed forcible sexual intercourse on 2.5.2020 in the agricultural

field. However, surprisingly, the victim has made such allegations in her statement recorded under section 164 of Cr.P.C.. The applicant is young person, behind the bars since long. Thus, considering the nature of allegations as discussed above, I am inclined to release the applicant on bail with certain conditions. Hence the following order:-

O R D E R

- I. Application is hereby allowed.
- II. The applicant Shahruxh Shamad Beg, in connection with crime No. I-237 of 2020 registered with Pathardi police station, District Ahmednagar for the offences punishable under Sections 376(2) (I), 354, 504, 506 of I.P.C. and under Section 3, 4, 5 (L), 6, 7, 8, 9 (L) and 10 of the Protection of Children from Sexual Offences Act 2012 be released on bail on furnishing personal bond of Rs.20,000/- with one solvent surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence in any manner.
 - b) The applicant shall not make any attempt to meet or communicate the victim, in any manner, till the conclusion of trial.
- III. Application is disposed of.

(V. K. JADHAV, J.)

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