

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.44 OF 2021

Shivram s/o Soma Khodake = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.Joyeb I.Shaikh, Advocate for Applicant;

Mr.SY Mahajan, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 12th February, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.80/2020 dated 8.3.2020 with Akole police station, District Ahmednagar for the offences punishable under Sections 302, 376, 379 read 34 of IPC. He has filed the present application under section 439 of Cr.P.C. for bail.

2. Heard Mr.Shaikh, learned Advocate for applicant and Mr.SY Mahajan, learned APP for Respondent-State.

3. It has been submitted on behalf of the applicant that the applicant came to be arrested on 19.3.2020 and since 20.3.2020, he is in Magisterial custody. The entire investigation is over and

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charge sheet is filed before the JMFC, Akole on 28.5.2020.

4. Perusal of the entire charge sheet would show that the case is made out by the prosecution in respect of Sections 302, 376 of IPC against accused No.2 – Somnath Gaikwad and it is the prosecution story that the present applicant had helped accused No.2 in stealing the goat belonging to the deceased and then selling it in Agricultural Produce Market committee to one Kiran Pisal. Now the goat is also recovered. The evidence of DNA is also against accused No.2. he has discovered the clothes on his person at the time of the incident. Even as per the prosecution story, accused No.2 had kept the present applicant on the road with his motorcycle and accused No.2 had gone where the deceased was tethering her cattle. That place is far away and, therefore, it can not even be said that the present applicant had shared common intention with accused No.2 for committing rape and then murder. Further, the applicant suffers from diabetes and blood-pressure. Even Sub-Jailor had given a letter to Additional Sessions Judge, Sangamner on 12.11.2020 that the present applicant

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requires insulin injections to be given daily and it is not possible at the rural hospital in Akole. He, had, therefore, canvassed for releasing the applicant on parole or on persona recognition. The applicant is ready to abide by any terms of bail.

5. The learned APP strongly opposed the application and submitted that there is ample evidence against the present applicant. His presence near the spot with the accused has been stated by the witnesses. He could not have again there without any reason. Further, he has definitely taken active part in the stealing the got and selling it. Therefore, he does not deserve discretionary relief.

6. Taking into consideration the case of the prosecution itself that the deceased was raped and murdered by accused No.2 only and he has made discovery. Strictly speaking, those sections, i.e. 302 and 376 f IPC, may not be applicable to the present applicant. However, if Section 34 of IPC is to be pressed, then it would be for the prosecution to prove that he was sharing the common intention with accused No.2 Now, as regards the offence under Section 379 of IPC is concerned, it

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is stated that the goat, belonging to the deceased, was stolen after she was murdered and then there is evidence to the effect that the present applicant had sold the said goat along with accused No.2 to Kiran Pisal. That goat has now been recovered. Under such circumstance, the applicant deserves to be released on bail. Further, there is medical evidence in his favour. Hence, the following order, -

ORDER

i. The Bail Application stands allowed.

ii. The applicant, who has been arrested in connection with CR No.80/2020 dated 8.3.2020 with Akole police station, District Ahmednagar for the offences punishable under Sections 302, 376, 379 read 34 of IPC, be released on PR of Rs.30,000/- with two sureties of Rs.15,000/- each.

iii) The applicant shall not tamper with the evidence of the prosecution and shall not indulge in any criminal activity.

iv) The applicant shall comply with the requirements under paragraph No.12(1)

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to (6) of Chapter-I of Criminal Manual,
whichever are applicable.

v) Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV