

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 BAIL APPLICATION NO. 574 OF 2021

Shivshankar Parmanand Tangde
Age : 36 years, Occu – Labouror,
R/o – Mangalmurty colony,
Ranjangaon, Tq. Gangapur,
Dist. Aurangabad (at Present in Jail) ... APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Inspector,
MIDC Waluj Police Station,
Tq. Vaijapur, Dist – Aurangabad
2. X.Y.Z.
Age : 20 years, Occu. Household
C/o. Shivprasad Dnyanba Tangade,
R/o. Adjacent to Ramnagar Palna Ghar,
Rajguru Layout, Buldhana
Tq. & Dist. Buldhana. ... RESPONDENTS

Shri. Ajay G. Talhar, Advocate for the applicant
Shri. S. P. Sonpawale, APP for the respondent/State
Shri. R. K. Khandelwal, Advocate for respondent No. 2.

CORAM : M. G. SEWLIKAR, J.

DATED : 21st September, 2021

PER COURT :-

1. Heard.
2. The wife of applicant is the cousin of the

informant. The informant was 19 years of age at the time of lodging the report. In the year 2018, pregnancy of the wife of the applicant was terminated. Therefore, to help her, the informant was called at the residence of the applicant. The informant was returning home at Ranjangaon on the motorcycle of the applicant. On Paithan road near a brook, the applicant stopped the motorcycle, dragged her to a field of sugarcane and had sexual intercourse with her. The applicant is alleged to have clicked the photos of the informant in an inappropriate position. The applicant had threatened the informant that he would make these photos viral if she divulged this incident to anyone. The applicant on this pretext had sexual intercourse with the informant time and again. The informant remained pregnant. During her pregnancy of 8 months, the applicant had opened his facebook account and the facebook account of the informant and had uploaded the information mentioning therein that the informant wanted to sell the infant for Rs. 4 lakhs. The applicant and the informant were therefore arrested. She delivered a baby girl. The informant was lodged in

reformatory home. The applicant got her custody and brought her to his home and again had sexual intercourse with her. Thereafter, she lodged the report against the applicant on the basis of which offence under Sections 376(2)(n), 506 read with Section 34 of the Indian Penal Code and under Sections 4 and 12 of the POCSO Act came to be registered in MIDC Waluj Police Station, Aurangabad.

3. Learned counsel Shri. Talhar for the applicant submitted that the applicant is alleged to have had sexual intercourse with the informant. He submitted that DNA report has been received. It shows that the child was born to the informant not from the applicant but from her husband Murlidhar Lambe.

4. Learned APP Shri. Sonpawale for the respondent/State and Shri. Khandelwal for the informant submitted that the informant was subjected to sexual intercourse against her will. At the time of the incident she was minor. Therefore, her consent for sexual intercourse was

immaterial. Both of them submitted that during her minority she was subjected to intercourse. Therefore, offence under Sections 376 of the Indian Penal Code is clearly made out.

5. Report of the DNA is produced on record. Learned counsel Shri. Talhar on instructions makes a statement at Bar that this certificate has been produced in the trial Court by the Investigation Officer. The DNA report shows that the daughter of informant was not born from the applicant. Her biological parents are the informant and her husband Murlidhar Lambe. In this view of the matter, the allegations made in the FIR do not stand substantiated. Having regard to this, case for bail is made out. Applicant does not have criminal background. He will be available for trial. He will not flee from justice. Since charge-sheet is filed further detention of the applicant is not required. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with

one solvent surety in the like amount in connection with CR No. 76 of 2021 under Sections 376(2)(n), 506 read with Section 34 of the Indian Penal Code and under Sections 4 and 12 of the POCSO Act registered with MIDC Waluj Police Station, Aurangabad.

3. Application is disposed of.

4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp