

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

920 BAIL APPLICATION NO.718 OF 2021

Akash S/o Indrajit Upase
Age: 25 years, Occu.Labour,
R/o.Narewadi, Tq.Barshi,
Dist.Solapur.

..Applicant

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Osmanabad (City),
Tq. & Dist.Osmanabad.

..Respondent

...
Advocate for Applicant : Shri Shrikant G. Kawade
APP for Respondent : Shri P.G.Borade

...
CORAM : M.G.SEWLIKAR, J.

DATE: 14th October, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.01 of 2021, registered with Osmanabad City Police Station, Dist.Osmanabad, under Section 376 read with Section 34 of the Indian Penal Code

2. The allegations against the applicant are that the applicant had called up the informant and asked her her name. Thereafter, the applicant and the informant started talking on phone. This

relationship blossomed into love. Therefore, they decided to meet. On 29th December, 2020 at 09:00 p.m. applicant called up the informant and said to her that she should come to meet him at Osmanabad, else applicant would come to Solapur to see her. Therefore, the informant went to Osmanabad by Bus. Applicant had come to the Bus stand to receive her. From Bus stand, applicant took her to a lodge. They stayed in Room No.102. Thereafter, applicant had sexual intercourse with the informant twice against her will. Thereafter, the applicant and the informant came down after checking out from the lodge. A car was waiting for them in which three friends of the applicant were sitting. All of them dropped her to Solapur at her house. Thereafter, on 1st January, 2021 informant lodged the instant FIR, on the basis of which crime under the aforesaid sections came to be registered.

3. Head Shri S.G.Kawade, learned counsel for the applicant and Shri P.G.Borade, learned APP for the respondent-State.

4. Allegations in the FIR themselves show that the alleged sexual intercourse was with consent. Shri Kawade, learned counsel for the applicant submits that the conduct of the applicant shows that she was the consenting party for the

alleged sexual intercourse.

5. Contents of the FIR show that the applicant had taken the informant to Room No.102 of Abhiraj Lodge. Informant stayed with the applicant even during the night hours and during the night time applicant had sexual intercourse with the informant. Informant alleges that it was against her will. It is worth noting that the informant and applicant came out of the Lodge. A car was waiting for them below the lodge. Both of them got into the car and the applicant and his three friends dropped the informant at her house at Solapur. All these events show that she did not any time raise any grievance about the alleged rape. On the contrary, she willingly accompanied the applicant and his three friends. They travelled together from Osmanabad to Solapur. Moreover, the applicant is in jail since 1st January, 2021. Applicant has no criminal antecedents. He is not likely to commit similar offence again. He is permanent resident of village Narewadi, Tq.Barshi, District Solapur. In view of this, I am inclined to release the applicant on bail.

ORDER

- i) Bail Application is allowed.

ii) Applicant be released on P.R.Bond of Rs.15,000/- (Rs. Fifteen thousand only) with one solvent surety in the like amount, in connection with Crime No.01 of 2021, registered with Osmanabad City Police Station, Dist.Osmanabad, under Sections 376 read with Section 34 of the Indian Penal Code.

iii) Bail Application is disposed of.

iv) 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)
JUDGE

SPT