

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

**942 BAIL APPLICATION NO.813 OF 2021
WITH APPLN/1782/2021 IN BA/813/2021**

**MANIK @ MANSING S/O BHIKA RATHOD
VERSUS
THE STATE OF MAHARASHTRA**

Shri. S. J. Salunke, Advocate for the applicant
Shri. S. P. Sonpawale, APP for the respondent/State
Shri. I. D. Maniyar, Advocate for the informant

CORAM : M. G. SEWLIKAR, J.

DATED : 25th August, 2021

PER COURT :-

1. This is an application for bail under Section 439 of the criminal Procedure Code.
2. Prosecution case in short is that on 22nd February, 2021, the informant and her husband were sleeping in their field at 12.30 noon. At that time the applicant went to the informant and asked to her as to what she was doing. She said that she was ploughing the field. At that time applicant pulled her and took her in the cotton field in which cotton was grown and committed rape on her. Informant's husband woke up and came to her. Her husband caught hold of the

applicant. Applicant beat her husband and ran away. This incident was narrated by her to her son. On his arrival this report was lodged on the basis of which offence under Sections 376 and 323 of the Indian Penal Code came to be registered.

3. Heard Shri. Salunke, learned counsel for the applicant, Shri. Sonpawale, learned APP for the respondent/State and Shri. Maniyar, learned counsel for the informant.

4. Shri Salunke, learned counsel for the applicant submitted that from the tenor of the FIR it appears that it was a consensual relationship. In the FIR she nowhere states that she raised shouts because of which the husband of the informant came. He submits that tenor of the FIR shows that on waking up, the husband of the informant went there and noticed the consensual intercourse and therefore, this FIR is filed. He submits that medical evidence also does not support the informant. He submits that applicant is 71 years of old. Charge-sheet is filed. Detention of the applicant

behind the bars is, therefore, not necessary. He, therefore, prays for releasing the applicant on bail.

5. Learned APP Shri. Sonpawale for respondent/ State submits that under Section 164 of the Code of Criminal Procedure, the informant has stated that she raised shouts and on hearing her shouts, her husband came there and thereafter applicant ran away after beating her husband. He submits that FSL report is still awaited.

6. Learned counsel Shri. Maniyar for the informant states that the informant has filed N.C. against the applicant threatening her to withdraw the complaint. Therefore, applicant may not be released on bail.

7. From the FIR it does not appear that when the applicant was being pulled to the field she raised any shouts. It is further seen that medical report does not show any injuries on the person of the informant. The alleged intercourse took place in the field. Medical Officer states that sexual intercourse cannot be ruled out. Charge-sheet is

filed. Therefore, there is no question of tampering with the evidence. Applicant is not likely to flee from justice. Considering the age of the applicant and particularly pandemic situation created by Covid-19, I deem it appropriate to release the applicant on bail on condition that he shall not enter the village till the conclusion of trial. Hence the following order :-

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in connection with CR No. 44 of 2021 under Sections 376, 323 of the Indian Penal Code registered with Chaklamba Police Station, Beed and on condition that he shall not enter the village till the framing of charge.
3. Application is disposed of.
4. All pending applications stand disposed of.

[M. G. SEWLIKAR, J.]

ssp