

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

935 BAIL APPLICATION NO.827 OF 2021

KISAN SAHEBRAO HIWALE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Mahesh P. Kale
APP for Respondents/State : Mr. S.W. Munde
Advocate for R/2 : Mr. Navin Shah

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CORAM : M.G. SEWLIKAR, J.
DATE : 26th October, 2021

PC.:-

Heard.

2. Informant is aged 16 years. She lost her parents during her childhood. Her step father and step mother maintained her. She got married with one Raju Prajapati in the year 2020 who is the resident of Balutara, Rajasthan. Because of the ill-treatment of in laws, she left them and came to Aurangabad with her neighbour Ramesh. She started residing with one Laxman, brother of Ramesh. Since she did not get along well with Laxman and his wife she left their house. On the way she met one person who was physically handicapped by one leg. He took her to his house where she got acquainted with one Kisan. Kisan married her in a temple. She left Kisan also

as he ill-treated her. She again went back to him as he promised her to maintain her well. On 07.01.2021 at 2.00 am she came to railway station. Railway police asked her to leave the station. Therefore, she stayed below a tree. At 4.00 am she went for urination at that time three people came there who had covered their faces with a cloth. At 5.00 am she woke up and found that she was completely disrobed. She was brought to the police station by some people. She lodged complaint against unknown persons for having committed rape on her. On these allegations FIR came to be lodged against unknown persons under Section 366, 376 (3), 376 (DA), 376(2)(n), 323, 504 of the I.P.C. and under Section 4, 5(L), 6, 8 and 12 of the POCSO Act vide Crime No.04/21 registered with Osmanpura Police Station, Aurangabad.

3. Heard Shri Kale learned counsel for the applicant, Shri Munde learned APP for the State and Shri Navin Shah learned counsel for the respondent no.2 appointed by legal aid committee.

4. Shri Kale submits that informant has not mentioned complete name of the applicant. His name does not appear in the FIR. He further states that her allegations are against unknown persons. He submits that supplementary statement recorded by the police of the informant is diagonally opposite with the allegations made in the FIR.

5. Learned APP Shri Munde and Shri Shah submit that name of applicant is mentioned in the FIR and also in the supplementary statement.

6. Supplementary statement of the informant came to be recorded after two days of the incident. In her supplementary statement she did not make any allegations against the said Kisan. In the FIR she states that she married Kisan while in the supplementary statement she states that the said Kisan forcibly married her. In the supplementary statement, she again says that she had falsely stated while lodging the FIR that three unknown persons committed rape on her. This shows that she has practically abandoned the allegations made in the FIR. In her statement under Section 164 of the Cr.P.C. also she stated that she had falsely stated that three unknown persons had committed rape on her. Practically, there is no evidence to show that applicant married the informant. Charge-sheet is filed. Applicant is the resident of Aurangabad. He does not have criminal antecedents. He will be available for trial. Considering the contradictory allegations made by the informant, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.15,000/- with one solvent surety in the like amount, in connection with Crime No.04 of 2021 under Section 366, 376 (3), 376 (DA), 376(2)(n),

323, 504 of the I.P.C. and under Section 4, 5(L), 6, 8 and 12 of the POCSO Act registered with Osmanpura Police Station, Aurangabad.

- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.
- IV) Trial is expedited.

[M.G. SEWLIKAR, J.]