

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

923 BAIL APPLICATION NO. 872 OF 2021

**SHIVRAJ @ BABLU NAVNATH BANSODE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. M. V. Ghatge, Advocate for the applicant
Shri. S. W. Munde, APP for the respondent/State
Smt. Renuka Ghule, Advocate for respondent No. 2
(appointed)

CORAM : M. G. SEWLIKAR, J.

DATED : 07 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 CR No. 113 of 2021 registered with Majalgaon City Police Station under Sections 376 and 506 of the Indian Penal Code and under Section 4 of the POCSO Act.

2. Facts giving rise to this application are that the applicant is the son of the paternal aunt of the victim. There were celebrations on 6th January, 2021 at the residence of

uncle of the informant by the name of Prakash Kshirsagar. The applicant also was present at the time of the said function. At 7.30 p.m. the applicant requested the informant to accompany him and took her to the house of one Dedhe Guruji. He committed rape on her. He asked her to leave the room after him. Two days before the lodging of the complaint, the informant suffered abdominal pains. When the informant was questioned by her mother, she divulged the incident to her mother. Thereafter, FIR came to be lodged on 9th April, 2021.

3. Heard Shri. Ghatge, learned counsel for the applicant, Shri.Munde, learned APP for the respondent/State and Smt. Renuka Ghule, learned counsel for respondent No. 2/informant.

4. Learned counsel Shri. Ghatge submits that the applicant and the informant are the relatives. The informant is the daughter of the maternal uncle of the applicant. He submits that medical evidence does not support the

allegations made in the FIR. He submits that the tenor of the complaint shows that the alleged sexual intercourse was with consent.

5. Learned APP Shri. Munde and Smt. Ghule submit that question of consent goes on the back burner as the informant was 16 years of age at the time of the incident. Both of them submit that offence is serious in nature. Therefore, no discretion can be exercised in favour of the applicant.

6. The findings in the medical examination report show that the applicant pleaded ignorance about penetration by the genital organ of the applicant. It further shows that the hymen of the informant was intact and there was no injury to her hymen. There is delay in lodging FIR. The incident took place on 6th January, 2021 whereas the FIR came to be lodged on 9th April, 2021. Applicant does not have criminal antecedents. There is nothing on record to show that the applicant will commit similar offence again. He

has permanent residence of village Salapuri, Dist. Parbhani. Therefor, he will be available for trial. Considering the medical report and the fact that the applicant will be available for trial, I am inclined to release the applicant on bail. In view of this following order is passed.

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. 113 of 2021 under Sections 376 and 506 of the Indian Penal Code and under Section 4 of the POCSO Act registered with Majalgaon City Police Station, Majalgaon, Dist. Beed and on condition that he shall not keep any contact with the applicant and shall not enter the village of the applicant till the conclusion of the trial.
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