

925 BAIL APPLICATION NO.1051 OF 2021

VERSUS

CORAM : M.G.SEWLIKAR, J.

DATE: 23rd September, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.
2. Prosecution's case in short is that the informant is the maternal aunt of the applicant. The informant had gone to the field alongwith her husband and children as three patients were found Covid positive in the village.

3. It is alleged in the First Information Report (FIR) that on 19th April, 2021, the informant aged 31 years, her husband and their children were sleeping in an open space in the field. At 12:30 in the night, the husband of the informant had gone to the field for watering the field. The applicant came there and demanded sexual favour from the informant. The informant said that her husband would come, her children would wake up. Thereupon, the applicant said that he would take care of it. The applicant disrobed himself and also was trying to disrobe the informant. The informant was offering resistance to the applicant. He beat her and had sexual intercourse with the informant. Soon thereafter, her husband came there and he saw that the applicant and the informant were in compromising position. The husband of the informant pulled the applicant away. Thereafter, the applicant collected the clothes and ran away. This incident took place on 19th April, 2021. First Information Report was not lodged for a month. Thereafter, the informant lodged the FIR as the applicant did not mend his ways and started visiting the informant again. Therefore, the informant filed FIR on 18th May, 2021. On the basis of these allegations, Crime No.0109 of 2021 came to be registered with Osmanabad Rural Police Station, Dist.Osmanabad, under Sections 376, 354(D), 323, 504 and 506 of the Indian Penal Code .

4. Heard Shri V.B.Deshmukh, learned counsel for the applicant and and Smt.D.S.Jape, learned APP for the respondent-State.

5. Shri Deshmukh, learned counsel for the applicant submits that tenor of the FIR itself clearly shows that the alleged sexual intercourse was with consent. The applicant was 24 years of age and the informant was 31 years of age at the time of the incident. He submits that the FIR seems to have been lodged when the husband saw the applicant and the informant in compromising position. He submits that charge-sheet is filed. Applicant has no criminal antecedents. He is not likely to commit similar offence again.

6. Smt.Jape, learned APP for the respondent-State submits that the applicant and the informant are closely related. The applicant is the nephew of the informant. Still he indulged into such heinous act. She submits that statement of son of the informant aged 11 years has been recorded. It shows that the applicant had forceful intercourse with his mother. She further submits that though charge-sheet is filed, the applicant may pressurize the informant and the witnesses, who are minors. She, therefore, prayed for rejection of the application.

7. It is not in dispute that charge-sheet is filed. Therefore, further detention of the applicant is not required. There is no enmity between the applicant and the informant. There is delay of one month in lodging the FIR. Whether this explanation is acceptable or not will be a matter to be considered during trial. At this stage, having regard to the fact that the charge-sheet is filed and the applicant has no criminal antecedents and that he will be available for trial, I am inclined to release the applicant on bail. To allay the fear of the prosecution, the applicant can be put to stringent conditions. In view of this, following order is passed.

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs.Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.0109 of 2021, registered with Osmanabad Rural Police Station, District Osmanabad, under Sections 376, 354(D), 323, 504 and 506 of the Indian Penal Code and on condition that he shall not enter the village of the informant i.e.Warwanti, Tq. & Dist.Osmanabad, till conclusion of the trial.
- 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