

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

BAIL APPLICATION NO.1303 OF 2021

Vishar S/o Mithu Pawar

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Shri S.S. Thombre Advocate for Applicant.
Shri V.M. Kagne, A.P.P. for Respondent-State.
Smt. Shital Eknath Waghmare, Amicus Curiae for informant.
...

CORAM: M.G. SEWLIKAR, J.

DATE : 24th NOVEMBER, 2021

ORDER :

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. 0212 of 2021 registered with Police Station Waluj, Aurangabad, for the offences punishable under Sections 376(2)(f), 324, 504, 506 read with Section 34 of the Indian Penal Code.

2. On 7th May 2021, the informant has lodged report that on 29th April 2021 at about 4.00 p.m. there was quarrel between her neighbours Satish Kale and Kalyan Pawar. Since informant tried to intervene in the quarrel, Vishar Mithu Pawar (applicant), Kalyan Pawar and Keshav Balya Pawar assaulted the informant. Her daughter Mandakini was also beaten by these people. After the incident of assault by the accused persons, both, Kalyan Pawar and Keshav Pawar committed rape on the informant. On 29th April 2021, soon after the incident, informant went to the police station and lodged report regarding the assault by the accused persons. At the time of lodging report on 29th April 2021, she did not make any allegation about rape. These allegations of rape were made on 7th May 2021, whereas the incident is dated 29th April 2021 and she had lodged report in the police station on the same day i.e. on 29th April 2021.

3. Learned counsel Shri Thombre submits that this is a false case. No explanation is forthcoming from the informant as to why the allegations of rape were not made at the time of lodging the report with the police station on 29th April 2021 itself. He submits that these allegations are made just to seek revenge on the applicant and others for the incident which happened on 29th April 2021.

4. Learned APP Shri Kagne opposed the application contending that offence is serious and the informant was ravished. Heard Learned *Amicus Curiae* Smt. Waghmare. She also states that the offence is serious in nature and the applicant should not be released on bail.

5. It is pertinent to note that incident took place on 29th April 2021. Soon after the incident the injured/victim had gone to the police station on 29th April 2021 itself and she lodged the report there regarding the assault only. Thereafter, on 7th May 2021, she lodged the report that she was raped by accused No.1 - Kalyan Pawar and accused No.2 - Keshav Pawar.

6. These allegations seem to have been made after eight days of the incident. No explanation is forthcoming for not incorporating these allegations in the report lodged on 29th April 2021. Silence of the informant for a period of eight days after being ravished, entitles the applicant to be released on bail.

7. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant be released on bail on his furnishing P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand) with one solvent surety in the like amount, in connection with Crime No. 0212 of 2021 registered with Police Station Waluj, Aurangabad, for the offences punishable under Sections 376(2)(f), 324, 504, 506 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/s only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.
- (v) Fee of learned *Amicus Curiae* Smt. Waghmare is quantified at Rs.5,000/-, to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[M.G. SEWLIKAR, J.]