

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 BAIL APPLICATION NO.110 OF 2022

FAIZANKHAN AYUBKHAN PATHAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.S. Ghanekar, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21st MARCH, 2022

ORDER :

1 The applicant has been arrested by Kannad City Police Station, Dist. Aurangabad in Crime No.309/2021, for the offence punishable under Section 312, 315 read with Section 34 of the Indian Penal Code, 1860. His earlier bail application before this Court bearing Bail Application No.1444 of 2021 was disposed of as withdrawn on 09.12.2021 after the disinclination was shown by this Court.

2 Heard learned Advocate Mr. N.S. Ghanekar for the applicant and learned APP Mrs. V.N. Patil-Jadhav for the respondent.

3 It has been vehemently submitted on behalf of the applicant that applicant was arrested on 27.10.2021 and he is in jail. There is no progress in the case. He is 19 years old boy. Charge sheet was filed on 27.12.2021 and it can be seen from the contents of the charge sheet that statement of the victim was recorded, who was aged 19. Her statement under Section 161 of the Code of Criminal Procedure would show that there was love affair between her and the applicant, but they had not told the said fact to the parents. They were in contact with each other. She also states that if they would have disclosed the said fact to their parents, then, there would have been resistance. Still they were meeting each other and upon the victims call to Aurangabad the applicant had gone to Aurangabad. They had gone to a hotel and had sexual intercourse and thereafter she became pregnant. It is then alleged that the applicant had supplied her medicine to cause miscarriage and after consumption of the same the girl became ill and was taken to hospital, where the fetus was removed. Even the victim is a co-accused in this case. There was no ill intention on the part of the applicant as well as the victim. The applicant is ready to abide by the terms of the bail.

4 The learned APP has strongly opposed the application and submitted that since the charge sheet is filed, there is evidence against the applicant. The sample has been sent for DNA testing and in fact, the girl is

very much clear in stating that because of the applicant she became pregnant and he had supplied her the medicine. When there is sufficient evidence on record, there is no question of showing leniency.

5 At the outset, it can be said that age of the accused can also be taken note of and in certain circumstances discretion can be used, so that a young boy should not come in contact with hardened criminals, but that depends on the facts of the case. Though in this case the victim is major and it appears that she had sexual intercourse with the applicant willingly or voluntarily, but then what has happened thereafter is rather bothering and serious. The evidence has been collected in the form that they both had gone to a hotel and booked a room. They had given their Aadhar card copies. Whether this is a sign of modern thinking and the society should accept such changes would be a debatable question. But then, at the same time, we cannot forget that the victim as well as the present applicant are Muslim, where certain section of people are still orthodox. There was no hurdle for the victim and the applicant to get marry. There may be resistance from their family members. But then at one place the girl, though the girl is an accused and her statement has been recorded, says that the love affair between her and the applicant would not have been accepted by the parents; at another breath she says that they wanted to marry with the consent of elders.

However, certainly indulging in sexual intercourse prior to marriage would not have been accepted in their community also.

6 After it was made known to the applicant that the victim has become pregnant from him, it is stated that he had procured the tablets/medicine for miscarriage. It is stated that the victim had consumed two tablets and thereafter she started bleeding as well as there was stomach ache. She was then taken to Rural Hospital. She did not disclose that she is pregnant, at that time. The pregnancy has been checked by the girl prior to that, in the house, when the kit was supplied by the applicant. After the initial treatment was given by the Doctor there, her trouble could not subside and it was told to her that sonography required to be done. But she had gone in the WC of the hospital itself. She felt unconscious. It was hard time for her and while bringing her from WC, the fetus came out of the uterus. The staff Nurse in her statement states that she was then taken to delivery room and the fetus was taken out. The age of the fetus was between 22 to 24 weeks. It was not breathing nor crying and there were no pulses. It was declared dead after about half an hour by the Doctor. Knowledge that such thing may happen after the consumption of those tablets could be sufficient to prima facie attract the offence and, therefore, when there is prima facie evidence against the applicant, his age cannot be considered as a factor to

grant him bail. Even in this age his activities have landed him in jail. Application, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)

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