

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

951 BAIL APPLICATION NO.281 OF 2022

Santosh Shivram Kawade ...Applicant

VERSUS

The State of Maharashtra and another ...Respondents

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Advocate for Applicant : Mr. Sudarshan Salunke h/f Mr. Nade
Subhash S

APP for Respondent/State : Mrs. V.S. Choudhari
Advocate for Respondent No.2 : Mr. S.S. Ghodke

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CORAM : S.G. MEHARE, J.

DATED : 14th JUNE, 2022.

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel appointed for the victim.
2. The peculiar facts of the case are that the victim and husband are deaf. The applicant is the relative of the victim. It has been alleged that on the date of the incident, the accused entered the house of the victim when she was alone. He pulled her on the cot and committed forceful sex without her consent. At that time, the husband entered the home. He tried to catch the accused but jerked him and fled away. During the investigation, it was transpired that the victim was a minor at the time of the incident. Therefore, the accused was also booked for the offences punishable under the

provisions of the Protection of Children from Sexual Offences Act, ('POCSO Act' for short).

3. It is the vehement argument of the learned counsel for the applicant that no incident as such happened. The applicant has been falsely implicated in the crime. He would refer to the statement of the victim and argue that her statements are contradictory. That raises serious doubt about the alleged incident. The question is why the husband beat the woman who has suffered the sexual assault. He tried to point out that the prosecutrix must have been caught by her husband. Hence, he might have beaten her. He pointed out that the entire investigation papers except the school leaving certificate show that she was 20 years of age at the time of the alleged incident. He also referred to the medical reports and pointed out that there were no injuries on the person of the prosecutrix. He also pointed out the contradictory statements as regards the reactions of the husband. At one time, he says that he entered the house, and in the second place, he states that he locked the door from outside, and the victim states that the accused broke open the lock and the string and fled away. He would submit that the applicant has been behind bars since 25.10.2021. The investigation is over, and the charge sheet is filed. There would be no propriety in keeping the applicant behind the bar.

4. Opposing the application, learned counsel Shri Ghodge appointed for the victim vehemently argued that the victim is

differently-abled woman. She cannot speak. The applicant might have taken the disadvantage of her physical disability and must have committed forceful sexual intercourse with her. The husband of the victim is also deaf. He saw the accused committing the sexual intercourse with his wife. He tried to catch the applicant, but he fled away. The accused was arrested belatedly. There is every possibility of tampering with the prosecution witness, and he may threaten the victim and her husband, who are physically disabled. The learned APP also supported the arguments advanced by the learned counsel Shri Ghodge and strongly opposed the application.

5. Perused the papers and charge sheet. There appear contradictory statements as regards the catching of the accused with the victim. An exaggerated statement has also been made that the victim tried to shout, though unable to speak. It appears that the husband suddenly came home and noticed an unseen incident. There appears no reason for the husband to beat the victim who was the victim of forceful sexual assault. Be that as it may, there is no evidence of injury on the person of the victim or the accused. The victim is married. The accused has specifically denied the evidence of the age of the victim. The investigation papers at different places show that she was 20 years of age at the time of the incident. Besides the above facts, the fact remains that the investigation is over. The applicant has been languishing behind bars for around seven months.

There shall be no propriety in keeping the applicant behind bars.

Hence, the following order :

ORDER

- I) The application is allowed.
- II) The applicant, Santosh Shivram Kawade shall be released on bail in Crime No.248/2021 for the offence punishable under Sections 376(2)(J), 376 (2)(L), 452 of Indian Penal Code and under Section 4, 5 (H) (K), 6, 8, 12 of the Protection of Children from Sexual Offences (POCSO) Act registered with Police Station Majalgaon on executing PB. and S.B. of Rs.25,000/- (Twenty Five Thousand) with one or two solvent sureties in the like amount, on the condition that he shall not enter the village of victim for further six months from the date of his release.
- III) He shall not tamper with the prosecution witness.
- IV) He shall not contact the victim or her husband in any way.
- V) Bail before the learned Sessions Court.
- VI) Hamdast allowed.
- VII) Fee for the learned counsel appointed for the victim is quantified at Rs.5,000/-. The Office do pay him the quantified fee at the earliest.

(S.G. MEHARE, J.)