

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

51 BAIL APPLICATION NO.399 OF 2022

VAISHALI W/O VINOD KALE  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER  
...

Advocate for Applicant : Mr Rajendra G. Hange and Mr Anirudh R.  
Hange

APP for Respondent No.1/State : Mr V.S. Badakh

Advocate for Respondent No. 2 : Mr N.R. Thorat

**CORAM : S. G. MEHARE, J.**

**DATE : 27<sup>th</sup> JUNE, 2022**

**PER COURT :**

1. Heard the learned counsel for the applicant, learned APP for the State and the learned counsel for the victim at length.

2. The allegations have been levelled against the applicant that the applicant is a sister of the co-accused and was insisting victim to love and marry with co-accused Pravin. The applicant and other lady were also teasing the victim that she should marry him. One day, they called the victim and asked her to talk to Pravin silently. They would contact him. She denied talking to co-accused Pravin, but they took her phone forcefully from her and connected it to co-accused Pravin. They were asking her to talk to Pravin. But, she denied talking to Pravin. That time, the present applicant with the co-woman accused, put a knife on her throat and compelled her to talk to co-accused Pravin. On 08.09.2021, the present applicant and other co-accused called the victim to her home. Pravin also came there and did forceful sex with her. When he was doing sex with her, the present applicant and other co-accused took the photographs and recorded the video on the mobile handset of the present applicant. The

victim has made similar allegations in her statement under section 164 of Cr.P.C. The learned counsel for the applicant submits that all other accused, including the main accused, Pravin, have been released on bail. The other co-accused, Chaitanya is absconding. He would refer to the first statement of the victim, which was recorded immediately and point out that except for threats given by the present applicant and woman co-accused, she has made no other allegations against them. The mobile handset of the present applicant was seized but nothing, as alleged by the victim, was found recorded in her mobile handset. He has vehemently argued that the victim has relations with other co-accused, but her parents were forcing the applicant and Pravin to marry her with co-accused Pravin. The CDR is collected by the Investigating Officer as regards the phone of the co-accused, Chaitanya. The applicant has a four years child. Nobody is in the family to look after him. The applicant has been languishing in jail since 18<sup>th</sup> February 2022. The investigation is over, and the charge sheet is filed. Therefore, she may be released on bail.

3. The learned APP placed on record the analytical report of the handset phone of the present applicant. It reveals that the case data does not find in her mobile handset.

4. Per contra, learned counsel appearing for the victim has vehemently argued that the applicant was a facilitator in committing the offence. The specific allegations have been made that she was forcing the victim to marry and love her brother Pravin. Referring to a statement of the victim under section 164 of the Cr.P.C. he would point out that there are direct allegations of abatement against the applicant. The abetment of an offence has been defined in section 16 of the POCSO Act. The material

collected by the Investigating Officer is sufficient to believe that the applicant was the facilitator in committing the offence. He would also submit that the punishment for abetment of the offence under the POCSO Act is the same punishment as if the main culprit has committed the offence. He would also refer to the medical examination report of the victim and would submit that there is evidence of an old vaginal rupture. Therefore, the application is liable to be rejected.

5. The allegations against the applicant are that she was teasing the victim that she should love and marry Pravin. The allegations have also been against her that one day, the applicant called a victim to her home. The victim went to the house of the applicant and made a phone call to the co-accused Pravin. Then, he also came there. On 08.09.2021, she was called by the applicant at her home, and the co-accused Pravin forcefully did sex with her; it was recorded in video and photographs were taken on the mobile of the applicant. The victim, in her statement given before the Police on 02.10.2021, has stated nothing except threatening her. The applicant has no concern with the further allegations of forceful sex done by co-accused Pravin. The investigation is complete. The applicant is behind the bar as the Forensic laboratory report of her mobile handset is awaiting. However, the report is negative. This was substantial evidence against the applicant. However, it is lacking at this juncture.

6. Considering the material evidence collected by the Investigating Officer, at this juncture, there are no allegations against the applicant except the words of the complainant and the victim. The applicant is 24 years only. Since nothing is required to be investigated from her, keeping the applicant behind the bar would not serve any purpose. Hence, the

following order:-

**ORDER**

- (i) The application is allowed.
- (ii) The applicant – Vaishali w/o Vinod Kale be released on bail on executing P.B. and S.B. of Rs. 20,000/- (Rupees Twenty Thousand) with one solvent surety of like amount in Crime No. 0292/2021 registered with the Ashti Police Station, District Beed for the offences under Sections 376, 376(2), 376(2)(j), 376 (2) (n), 376 (2) (1), 376 (3), 354, 354-B, 354-D, 506 r/w Section 34 of the Indian Penal Code and Sections 4, 8, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012, on the condition that she shall not contact the victim or her parents or any witness in any way.
- (iii) She shall not tamper with the prosecution witness.
- (iv) Bail before the learned POCSO Court.

**[ S. G. MEHARE, J. ]**

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