

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.460 OF 2022

VISHAL S/O VITTHAL DHOLE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicant.

Mr. A. A. Jagatkar, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28.04.2022

ORDER :-

. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.2095 of 2020 registered with Shrirampur City Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 376(2)(N), 376-D, 385, 386, 120-B, 420, 323, 506 read with Section 34 of Indian Penal Code.

2. It will not be out of place to mention here that the present applicant had earlier filed Bail Application No.201 of 2021 along with co-accused but that application came to be withdrawn on 21.05.2021 on the ground that the charge-sheet has been filed and he would approach the trial Court again. Thereafter, he again filed Bail Application No.1023 of 2021 before this Court, which came to be rejected on

10.12.2021 by giving reasoned order. That means, practically there is no change in circumstance as on today for the applicant to file the present application.

3. Heard learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for the applicant and learned APP Mr. A. A. Jagatkar for the respondent – State.

4. The learned Advocate appearing for the applicant submitted that the Bail Application No.1669 of 2021 filed by co-accused Pooja Vishal Dhole came to be allowed by this Court on 28.02.2022 i.e. after the rejection of bail application that was filed by the present applicant. Therefore, on the ground of parity, the applicant is entitled to be released on bail. It was specifically asked to the learned Advocate for the applicant as to whether that is the only change in the circumstance he want to state. He submitted that he is praying bail on merits also.

5. As regards the merits of the case are concerned, already this Court had considered all the submissions those were made by the applicant in his earlier bail application decided on 10.12.2021. At that time, the charge-sheet was before this Court. Now, therefore, he cannot agitate the same points on merits again. As regards the ground of parity is concerned, it is to be noted that co-accused Pooja, who appears to be the wife of present applicant, could not have been arrayed as an accused for offence under Sections 376, 376(2)(N), 376-D of Indian Penal Code.

Those allegations about committing of rape on the informant are against the present applicant and, therefore, the applicant cannot say that he is entitled to bail on the ground of parity. The facts of the case were already narrated in the earlier order dated 10.12.2021 and, therefore, they are not reproduced here. The allegations against the applicant, co-accused Prasad and Pooja are that all of them together had extorted amount of Rs.61,44,600/- from the informant by giving threat to her that they will make a video clip of the informant viral. Further, it is the allegation against the present applicant that on 28.02.2020 at about 8.30 p.m. the applicant had raped the informant, when his wife Pooja had left the house for some time. The applicant contends that there was money transaction between the informant and the applicant, however, the documentary evidence that has been collected in the form of money transaction would show that money was transferred by the informant. Now, as per the applicant it is the money lending transaction which he will have to prove. When there is *prima facie* case and it has been so elaborated by this Court in its earlier order, there is no reason to revisit the same points once again. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm