

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

932 BAIL APPLICATION NO.517 OF 2022

Akash Sanjay Kale
Age: 27 yrs. Occu.: Service (Army),
R/o. Village Borgaon,
Tq.Dharangaon, Dist.Jalgaon. ..Applicant

VERSUS

The State of Maharashtra ..Respondent

...
Advocate for Applicant : Mr.Satej S. Jadhav
APP for Respondent : Mr.A.M.Phule
Advocate for Informant : Mr. Ishwar K.Wagh

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 22nd April, 2022

ORDER :-

1. Present applicant has been arrested on 5th March, 2022 for the offence punishable under Sections 376, 420, 417 of the Indian Penal Code (IPC). He has filed present application under Section 439 of the Code of Criminal Procedure.
2. Mr.Ishwar K.Wagh, learned Advocate, who is representing the informant, has been permitted to assist the APP and accordingly the informant has also taken part in the process before this Court.

3. Heard Mr.S.S.Jadhav, learned Advocate for the applicant, Mr.A.M.Phule, learned APP for the respondent-State and Mr. Ishwar K.Wagh, learned Advocate for the informant. In order to cut-short, it can be said that they had made submissions in support of their respective contentions.

4. Perusal of the First Information Report (for short "FIR") lodged by the prosecutrix shows that she is aged 24 years and in her FIR itself she has admitted that there was love affair between her and the applicant since last about five years. According to her, the applicant had called her on phone on 25th February, 2022 and told her that after her examination on 26th February, 2022 at Jalgaon, they would meet at Jalgaon Railway Station. Accordingly, they met and then went to Bhusawal by Railway. It is then stated that the applicant had booked a room in a hotel. They both went to the hotel, stayed for a while and then again went Bhusawal city and made purchases. Then applicant told her that he has brought Mangalsutra for her from Jammu and Kashmir and also a Purse which he has kept at hotel and for that purpose, they went to hotel again. She states that applicant had tied Mangalsutra around her neck and told her that they are now husband and wife. She told him that they would perform marriage by going to their village but he did not listen and

according to her he had raped her on that day as well as at the night time. They checked out of the hotel at about 12:00 hours on 27th February, 2022. On the next day, applicant told her that his marriage is scheduled with another girl on 5th March, 2022 and asked her that she should not tell anything regarding their relationship to anybody. But she told the said fact as to what had happened at Bhusawal to her mother. Applicant's scheduled marriage on 5th March, 2022 got cancelled and according to the informant, she had hope that applicant would marry her but applicant refused and then she lodged report. Therefore, the perusal of the above said FIR would show that the girl is major and had love affair with the applicant. It appears that she had voluntarily gone alongwith him to Bhusawal. She could have refused to go alongwith him. Now, the question is as to whether he had sexual intercourse with her under the promise to marry her. It is to be noted that they were in love with each other since last five years but it appears that there is no whisper about any such act on the part of the applicant with her in the past and therefore, whatever appears to have happened between them appears to be with knowledge. Though, the learned Advocate for the applicant wants to rely on the WhatsApp chat between the applicant and the prosecutrix in which he had forwarded his wedding invitation card to the prosecutrix on 25th February, 2022

itself and she acknowledged the same in the morning of 26th February, 2022, those documents will have to be proved by the applicant at the time of the trial as those documents are actually in the form of electronic evidence.

5. The statement of the informant has been recorded under Section 164 of the Code of Criminal Procedure. It is more in detail than the FIR. It shows that they had gone to watch a movie also at Bhusawal but they left the movie in between and went to hotel. Neither in her FIR nor in her statement under Section 164 of the Code of Criminal Procedure the informant is disclosing as to what reason she had told to her parents about her outing and with whom she was.

6. The medical examination of the applicant as well as the prosecutrix has been done. The medical report shows that there was no fresh injury on the person of the informant, however, the opinion is stated as “possibility of sexual intercourse cannot be ruled out”. Statements of certain witnesses have also been recorded including the statement of hotel Galaxy’s owner from Bhusawal and the shop owners from Bhusawal from whom purchases were made. When the substantial part of the investigation appears to be over, now physical custody of the

applicant is not required further and taking into consideration the above facts, the applicant deserves to be released on bail, however, taking into consideration the fact that the applicant and the informant have residents of the same lane, strict conditions are required to be imposed. Hence, the following order:

ORDER

- i) Bail Application stands allowed.
- ii) The Applicant – Aakash Sanjay Kale be released on bail in connection with Crime No.0138 of 2022, registered with Bazarpeth Police Station, Bhusawal District, for the offence punishable under Sections 376, 417, 420 of the Indian Penal Code, on P.R.Bond of Rs.30,000/- (Rs. Thirty thousand only) with two solvent sureties of Rs.15,000/- each.
- iii) The applicant should not contact any of the witnesses involved in the case. He shall not visit or reside at Borgaon (Budruk), Tq.Dharangaon, Dist.Jalgaon till the conclusion of the trial. Before his release, he should inform the place where he wants to reside to the Investigating Officer as well as to the Sessions Court giving detailed address of his proposed residence. He should also share his location from the Mobile with the Investigating Officer occasionally preferably once in each week.

- iv) The applicant shall comply with the requirements set out in Para No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable, before the learned Sessions Judge/ Additional Sessions Judge, Bhusawal.
- v) The applicant shall not indulge in any criminal activity and shall not tamper with the prosecution evidence in any manner.
- vi) Bail before the trial Court.

**(SMT. VIBHA KANKANWADI)
JUDGE**

SPT