

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

BAIL APPLICATION NO. 709 OF 2022

Gautam Nivratti Yengde ... Applicant

Versus

The State of Maharashtra and another ... Respondents

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Mr. Amol Ratan Gaikwad, Advocate for applicant

Mr. N. T. Bhagat, APP for respondent No.1

Mr. Vishnu M. Jaware, Advocate (appointed through Legal Aid) for
respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 13th JULY, 2022

PER COURT :-

. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0031/2022, registered with Palam Police Station, District Parbhani, for the offence punishable under Sections 376, 376(2)(L), 323, 506 of the Indian Penal Code.

2. Heard.

Perused the First Information Report (FIR) and the related police papers.

3. The learned Advocate for the applicant would submit that there is delay of six days in lodging the FIR. The medical report is inconsistent with the prosecution case. The investigation is over. It will take time for commencement of trial and resultant conclusion. He, therefore, urged for grant of application.

4. The learned APP and the learned Advocate representing the victim would, on the other hand, submit that the victim was deaf and dumb. The applicant took disadvantage of her this position coupled with her mental retardness. Medical screening report of the victim was also adverted to show that there was recent hymenal tear. According to the learned Advocates, it is a heinous crime. Both of them, therefore, urge for rejection of the application.

5. The victim is deaf and dumb. There is certificate issued in March-2016 to indicate that she was mentally challenged, as well. The alleged incident took place on 05.02.2022 in the field. Although the victim narrated what had happened with her, she did not name the applicant. Both, the applicant and the victim are from one and the same village. It is said that the applicant's land is adjacent to the land of the informant. The learned Advocate therefore had every

reason to contend that the victim very well knew the applicant and therefore had he really been involved, she would have named him immediately. It has been averred in the FIR that after five days of the alleged incident, the victim saw the applicant and immediately rushed to inform her mother that the applicant was the culprit.

6. True, the medical examination report of the victim indicate recent hymenal tear. It however does not give its age. There is delay of about seven days in lodging of the FIR. The investigation of the crime is over. The charge-sheet has been filed. It will take time for commencement of the trial and the resultant conclusion thereof. In this factual matrix, the application is allowed in terms of following order:

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0031/2022, registered with Palam Police Station, District Parbhani, for the offence punishable under Sections 376, 376(2)(L), 323, 506 of the Indian Penal Code, on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

SMS