

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

BAIL APPLICATION NO.760 OF 2022

Dhiraj s/o Ravindra Fugare

... APPLICANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Mr. B.S. Doifode, Advocate for applicant
Mr. S.P. Sonpawale, A.P.P. for respondent – State
Mr. S.S. Kulkarni, Advocate for respondent No.2.
.....

CORAM : R. G. AVACHAT, J.

DATE : 26th JULY, 2022.

PER COURT :

Heard. 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.6/2022, registered at Adavad Police Station, Taluka Chopda, District Jalgaon for the offences punishable under Sections 376(2)(i), 325 of the Indian Penal Code and Sections 4(2), 8 of the Protection of Children from Sexual Offences Act.

2. the F.I.R. has been lodged by the victim herself on 7/1/2022 by 3.43. p.m. the victim claims to be 14 years of

age. She was in 8th Standard. Due to Covid-19, her school was closed. On 6/1/2022 at 8.00 in the morning, her parents and grandfather had left the house for work. The applicant is a distant relative of the informant. He would reside in the neighbourhood. He came informant's home by 12.00 noon and asked her as to why did she not stay in contact with him. The applicant is alleged to have sexual intercourse with the informant at her house. The informant had suffered bleeding from her private part. She fell sick. Her parents, therefore, admitted her to Sub-District Hospital, Chopda. On the following day, she lodged the F.I.R.

3. The learned counsel for the applicant would submit that, a false F.I.R. has been lodged. The applicant is just 18 years of age. Investigation is over. Charge sheet is filed. He, therefore, urged for grant of bail.

4. The learned A.P.P. and the learned counsel representing the respondent No.2 – informant would, on the other hand, submit that, it is a serious offence. The informant/ victim is just 14 years of age. The medical report supports the prosecution case. Both of them urged for rejection of the application.

5. Considered the submissions advanced. Perused the F.I.R. and the related papers. The alleged incident took place by 12.00 noon on 6/1/2022. The F.I.R. has been lodged 24 hours after the alleged incident. The applicant is not alleged to have assaulted the informant. After 11 days of lodging of the F.I.R., the victim gave supplementary statement to state that, the applicant, before committing rape, had twisted her hands. She thereby suffered fracture. If we peruse the history given to the Medical Officer who had medically screened the informant, it is stated therein that the applicant along with his brother and their father had come together to the informant's house. She was alone home. They beat her up with wooden stick. The applicant remained there. Others left. The applicant had sexual intercourse with the victim. When it was an offence of rape allegedly committed on 6th January, the mother of the victim gave consent on 10th January for victim's medical examination i.e. 4 days after the alleged incident. In proof of age of the victim, the school leaving certificate has been made part of police papers. The said school leaving certificate stands in the name of "Shweta Kishor Shimpi". The victim herein is "Shweta Mukesh Saindane". Her mother, therefore,

filed an affidavit contending that in school record, the victim's name is "Shweta Kishor Shimpi". It is also informed that parents of the victim are accused in a case of murder. Be that as it may.

6. The applicant is 18 years of age. The victim gave three inconsistent statements (referred to hereinabove). Her medical examination was made 4 days after the alleged incident. The school leaving certificate produced in proof of age of the victim stands in the name of some other person. Unless and until the matter goes for trial, it is just difficult to prima facie observe the allegations of the prosecution case to be reliable for rejection of the application. This Court is, therefore, inclined to grant the application. Hence the order :-

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.6/2022, registered at Adavad Police Station, Taluka Chopda, District Jalgaon for the offences punishable under Sections 376(2)(i), 325 of the Indian Penal Code and Sections

4(2), 8 of the Protection of Children from Sexual Offences Act, on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

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

**(R. G. AVACHAT)
JUDGE**

fmp/-