

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

BAIL APPLICATION NO. 803 OF 2022

Altaf Rajmohammed Shaikh

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. Shaikh A.M. Patel, Advocate h/f Mr. Shaikh F.V. Patel, Advocate for applicant

Mr. S.P. Sonpawale, A.P.P. for respondent no.1 – State

Mr. A.R. Shaikh, Advocate for respondent no.2

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CORAM : R.G. AVACHAT, J.

DATE : 26th JULY, 2022

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 63 of 2022 registered with Kopergaon Rural Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 323 and 506 of the Indian Penal Code.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by the victim herself. She is deaf and dumb. Her statement came to be recorded on the basis of gestures and signs

made by her. It is her case that the applicant resides in her neighborhood alongwith his family. On 13th February, 2022 by 12.00 noon she had been to a place towards river for answering nature's call. The applicant came there. He manhandled her. He then committed sexual intercourse with her without her consent and against her wish. She did not relate the said incidence to any of her family members as she was frightened. It is further her case that on 25th February, 2022 she had accompanied her friend – Rohini to answer nature's call. On the way, the applicant came on motorbike. He talked with Rohini and went away. Thereafter, some quarrel took place at the house of the informant. The informant with her cousin came to the police station and lodged the F.I.R.

4. According to learned counsel for the applicant, false F.I.R. has been lodged against the applicant. There is delay of thirteen days. The medical evidence does not support the prosecution. Statement of the friend of the informant rules out occurrence of any incident on 25th February, 2022. He, therefore, urged for grant of the application.

5. Learned A.P.P. would, on the other hand, urged for rejection of the application considering seriousness of the offence.

6. Considered the submissions advanced. The informant/victim is twenty eight years of age. The applicant resides in her neighborhood. The

alleged incident of rape took place on 13th February, 2022. She did not disclose the said incident to anyone until F.I.R. was lodged thirteen days thereafter. Her cousin had accompanied her to lodge the F.I.R. Sometime before she went to the police station, there was quarrel amongst her family members. Soon before such quarrel, the applicant had allegedly tried to come into contact with the informant and her friend – Rohini. In her statement under Section 164 of the Code of Criminal Procedure, the applicant did not relate the incident dated 13th February, 2022, on which the applicant allegedly raped her. However, she only reiterates incident dated 25th February, 2022 which has already been referred hereinabove. The applicant has been behind the bars for over five months. The charge-sheet has been filed. It will take time for commencement and conclusion of the trial. In the facts and circumstances of the case, pre-trial detention of the applicant is unwarranted.

7. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 63 of 2022 registered with Kopergaon Rural Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 323

and 506 of the Indian Penal Code, on 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, J.)

SSD