

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

**BAIL APPLICATION NO. 845 OF 2022**

Vijay Bhagwan Borade

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....  
Mr. A.S. More, Advocate for applicant

Mr. S.P. Sonpawale, A.P.P. for respondent - State

....

**CORAM : R.G. AVACHAT, J.**

**DATE : 02<sup>nd</sup> AUGUST, 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. 237 of 2021 registered with Tuljapur Police Station, Dist. Osmanabad for the offences punishable under Sections 376, 452 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 on 13<sup>th</sup> July, 2021. It is averred therein that the victim, a twenty seven years old woman,

was residing alongwith her grand-father. The grand-father passed away in the afternoon of 12<sup>th</sup> July, 2021. His funeral was over by six in the evening. The victim went to sleep by 10.00 p.m. She was alone at home. By 02.00 a.m. someone knocked on the door of her house. No sooner she unbolted the door from inside, one unknown person, in the age group of 30-35 years, forcefully opened the door and entered the house. The victim shouted. She also questioned him about his identity. He however, pressed her mouth and made her lie on the floor. He undressed her and then committed sexual intercourse with her. He gave threats to her life, if she share the incident with anyone. The informant, after having gathered courage, lodged the F.I.R. on 13<sup>th</sup> July, 2021 by 03.45 p.m.

4. Based on the description of the culprit given in the F.I.R., the applicant came to be arrested. Both, the victim and the applicant were medically screened. Blood samples and vaginal swabs of the victim and that of the applicant have been sent to the Central Forensic Science Laboratory, reports of which are still awaited. The charge-sheet has been filed.

5. Learned counsel for the applicant would submit that a false F.I.R. has been lodged. There is delay of over one and half day in lodging the F.I.R. Medical examination report does not support the prosecution case. The victim had earlier filed similar F.I.R. about three years before. Learned

counsel meant to say that the victim is in habit of making such false allegations. He, therefore, urged for grant of bail.

6. Learned A.P.P. would urge for rejection of the application on the ground that offence being serious one.

7. Considered the submissions advanced. The incident took place by 02.00 a.m. on 13<sup>th</sup> July, 2021. The F.I.R. has been lodged little over a day of the said incident. On previous day of the alleged incident, there was death of the grand-father of the informant at her house. She was alone at home post funeral. True, based on the description of the culprit in the F.I.R., the applicant was arrested. He has also been identified in the test identification parade. The medical examination report of the victim is suggestive of sexual intercourse. The said opinion was based on the history given by the victim. Final opinion was reserved pending C.A. report. The C.A. report has not yet been received. In the past, i.e. in 2017, the victim had lodged similar F.I.R. against an unknown person. It is not that the victim is being condemn of filing such report. The applicant has however, reason to make such grievance. Be that as it may.

8. There is delay of more than 24 hours in lodging the F.I.R. The victim is major. Her medical examination report neither supports nor

rules out sexual intercourse. C.A. report is awaited. The applicant was not named in the F.I.R. On investigation, the charge-sheet has been filed. It will take time for commencement and conclusion of trial.

9. 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. 237 of 2021 registered with Tuljapur Police Station, Dist. Osmanabad for the offences punishable under Sections 376, 452 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