

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.914 OF 2022**

Ganesh s/o. Shantaram Pawar ..Applicant

Vs.

The State of Maharashtra
and anr. ..Respondents

Mr.S.G.Chapalgaonkar, Advocate for applicant
Mr.S.P.Sonpawale, APP for respondent no.1
Mr.Divya Khandelwal, Advocate for respondent no.2 (appointed)

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 18, 2022**

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0084 of 2022 registered with Pahur Police Station, Dist. Jalgaon.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (F.I.R.) has been lodged by the victim herself on 21.03.2022 by 11.30 p.m. It is her case that she was 15 years of age at the relevant time. The applicant was serving with her father for agricultural operations of her father's land. For about for about one year, she had been in emotional relationship with

the applicant. The applicant made a phone call on the cell phone of the grand-mother of the informant by 11.30 p.m. The applicant asked the informant to come out of her house since he had come there. The informant, therefore, went out of the house to find the applicant to have come in a car. She boarded the car. The applicant took her to some distance away. He had sexual intercourse with her in the car itself. Both were together overnight. At 7.30 in the morning, the applicant dropped her at Pahur bus stand. The informant's uncle had come there in search of her and took her back home. It is further her case that since was frightened a lot, she did not share anything to her parents immediately. After her parents gave her support, she disclosed everything and then, came to the police station to lodge the report. On investigation, charge sheet has been filed.

4. Learned counsel for the applicant would submit that there is delay of little over two and half days in lodging of the FIR. The medical evidence does not support the informant's version since she was not medically screened immediately after she parted with the company of the applicant. According to him, the car stands in the name of the informant's father. The applicant was serving with

the father of the informant. With an oblique motive, the FIR has been lodged. He, therefore, urged for grant of bail

5. Learned APP and learned counsel representing the victim would, on the other hand, submit that the victim was just 15 years of age. Consent of the victim, therefore, was immaterial. The applicant is married one. According to him, the medical evidence suggests sexual intercourse. Both of them, therefore, urged for rejection of bail.

6. Considered the submissions advanced. Perused the FIR and the related papers. According to the informant/victim herself, she was emotionally involved with the applicant. The applicant was serving with her father for agricultural operations of his land. It is brought to the notice of this Court that the informant's father is the registered owner of the car. Possession of the car, however, was delivered to the applicant. Be that as it may.

7. There is delay of over two and half days in lodging of the FIR. The medical screening report of the informant/victim would, therefore, does not indicate her to have been subjected to sexual intercourse immediately before she parted alleged company of the

applicant. It was pointed out that a used condom was recovered and has been sent to the chemical analyst. Learned counsel for the applicant, however, brought to the notice of this Court the medical report, wherein it has been specifically mentioned, based on the history given by the informant, that no contraceptive was used.

8. Since there is two and half days' delay in lodging of the FIR and that on investigation, charge sheet has been filed, this Court is inclined to grant the applicant bail. Hence, the following order:-

- (i) The application is allowed.
- (ii) The applicant be released in connection with Crime No.0084 of 2022 registered with Pahur Police Station, Dist. Jalgaon, 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 in any manner.
- (iv) Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.6,000/- (Rupees Six Thousand).

[R.G. AVACHAT, J.]

