

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

BAIL APPLICATION NO. 1034 OF 2022

Dnyaneshwar Madhav Bhutapalle

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. P.P. Uttarwar, Advocate for applicant

Mr. A.V. Deshmukh, A.P.P. for respondent no.1 – State

Mr. V.D. Godbharle, Advocate for respondent no.2

Ms. H.R. Lomate, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT, J.

DATE : 21st SEPTEMBER, 2022

PER COURT :

1. Mr. V.D. Godbharle, learned counsel, informs that he has instructions to appear for Respondent No.2. In view of the same, appearance of Ms. H.R. Lomate, learned counsel appointed for Respondent No.2, stands discharged.

2. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 52 of 2022 registered with Shivaji Nagar Police Station, Dist. Latur for the offences punishable under Sections 376, 376(2)(n), 376(3), 363 and 506 of the Indian Penal Code and under Sections 4, 5(l), 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

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

4. The F.I.R. has been lodged by mother of the victim on 17th January, 2022. It has been averred therein that the informant has two daughters, elder one (victim) was little over fourteen years of age, studying in 9th standard. In the year 2020, they were residing at village Thotwadi. The victim was in 7th standard by that time. On one day, the informant and her husband were in the field. The victim was alone at home. On return of her parents, she related them that while she was changing her clothes by 01:00 p.m. at her residence, the applicant came home and kept staring at her. Since thereafter he started stalking her to and fro the school. The applicant was a close relations of the family of the informant. The victim was, therefore, kept first at Chakur and thereafter at Latur for education.

5. The gist of the prosecution case is that the applicant met the victim on 05th January, 2022. He told her to have her nude photograph in his cellphone. He took her to a secluded place and outraged her modesty. He had sexual intercourse with her twice there. He had taken her on his motorbike and thereafter brought her back to her school.

6. Learned counsel for the applicant would submit that the applicant is just twenty-one years of age. It can be a case of consensual

relationship. The F.I.R. has been lodged twelve days after the alleged incident. The medical evidence, therefore, does not support the prosecution case. He, therefore, urged for grant of bail.

7. Learned A.P.P. and learned counsel for the victim would, on the other hand, submit that the applicant is an uncle of the victim. It is not a case of consensual relationship. The victim was compelled to submit to his lust. It is also brought to the notice of this Court that the applicant had threatened the victim, and therefore, a separate complaint has been lodged at the concerned police station. According to them, if the applicant is granted bail, he may again trouble the victim. It is a serious offence. Both of them, therefore, urged for rejection of the application.

8. Considered the submissions advanced. The applicant is twenty-one years of age. It is true that the victim was little over fourteen years of age at the relevant time. Reading between the lines indicate it to be a case of consensual relationship. True, consent of the victim is immaterial since she is below eighteen years of age. The alleged sexual assault was made on 05th January, 2022. The F.I.R. has been lodged twelve days thereafter. Necessarily, the medical evidence, therefore, does not support the prosecution case. On investigation, the charge-sheet has been filed. It will take time for commencement and conclusion of trial. In this factual backdrop, the Court is inclined to grant the applicant bail.

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 on bail, in connection with Crime No. 52 of 2022 registered with Shivaji Nagar Police Station, Dist. Latur for the offences punishable under Sections 376, 376(2)(n), 376(3), 363 and 506 of the Indian Penal Code and under Sections 4, 5(l), 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, 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 make any attempt to contact the victim or her family members.

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

(R.G. AVACHAT, J.)

SSD