

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1021 OF 2022

Astan S/o. Abbas Chavan,
Age 42 years, Occu. Agri. and Labour,
R/o. Nipani Jalgaon, Taluka Pathardi,
District Ahmednagar. .. Applicant

Versus

1. The State of Maharashtra
Through its Investigation Officer,
Beed Gramin Police Station, Beed,
Taluka and District Beed.
2. X.Y.Z .. Respondents

Mr. Narayan B. Narwade, Advocate for Applicant;
Mr. S. B. Narwade, APP for Respondent No.1/State;
Mr. Sudheer R. Zambre, Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 25-08-2022

PER COURT :-

1. Heard the learned counsel for the applicant, the learned APP for respondent No.1/State and the learned counsel for respondent No.2/victim.

2. It has been alleged by the victim/complainant that on 16.09.2022, she went to meet her maternal uncle at Beed via Gevrai in the auto-rickshaw. She did not know the house of her maternal uncle, and hence, she was making an inquiry about the house of her maternal uncle in Balepir area. That time, all the

accused came in one Bolero Jeep, and they intercepted the auto-rickshaw. They took her forcibly from the auto-rickshaw. The auto-rickshaw driver fled away. Then the accused took the victim near one bridge in the Talegaon area. She was taken away from Bolero in the lemon tree. That time, the present applicant was asking the co-accused Sainath and others to give the victim to him for Rs.2 Lakh. However, the applicant took the victim to a lemon tree garden. He laid her down and did forceful sex with her. She shouted loudly. Therefore, two unknown persons stopped there. Then all the accused fled away. These two persons left her near the office of the Superintendent of Police. She told the incident to the police at Shivajinagar Police Station. She was administered the poisonous substance. Therefore, she had pains in her chest. Her mother came there, and she was taken to the hospital. On the basis of the report lodged by the victim, a crime has been registered against the applicant for the offence punishable under Section 376(d), 376(2)(i), 366(a), 341 of the Indian Penal Code read with Sections 3, 4, 9 (g) and 9 (n) and 10 of the Protection of Children from Sexual Offences Act, 2012.

3. The statement of the victim was recorded under Section 164 of the Code of Criminal Procedure (for short, "Cr.P.C."). The medical officer also examined her. The Investigating Officer has collected the evidence and filed the charge sheet against the accused.

4. Initially, the present applicant moved a Criminal Misc. Application No. 722 of 2020 for anticipatory bail before the Sessions Court, Beed. It was rejected by the Sessions Court on 03.11.2020. Then again, the applicant moved a Criminal Misc. Application No. 132 of 2022 before the Sessions Court. The said application has also been rejected by the learned Sessions Judge, Beed, by order dated 29.03.2022. Thereafter, the applicant approached this Court.

5. The learned counsel for the applicant has taken the Court through various statements and documents. He has vehemently argued that the co-accused Sainath is the uncle of the victim. They had a rivalry, and they lodged the report against each other. He would submit that around three independent witnesses who have shops near the spot of the incident did not support the prosecution case that the accused came in one Bolero Jeep, and they took the victim in the Bolero. He has also referred to the statement of the land owner having land near the spot of the incident and pointed out that it has also been stated that at the relevant time, he has neither seen the Bolero vehicle nor heard the screaming of the girl. The third witness is also on the same footing. He has also referred to the medical report and would point out that while narrating the history to the medical officer, the specific name of the applicant was not taken, and the opinion of the medical expert was based only on the history narrated by the victim girl. He has also referred

to the CDR of the applicant and submitted that at the relevant time, the applicant was on Pathardi road. He has also referred to the order passed by this Court in the Bail Application of one of the co-accused and argued that this Court has considered the fact that the co-accused was not present near the spot of the incident. He has also referred to the spot panchnama and argued that the spot panchnama was drawn in the light of a mobile torch and battery, and nothing adverse was found there to implicate the applicant in the crime. He explained that the applicant was not absconded, but he was attempting to get anticipatory bail. The applicant is a relative of another co-accused Sainath. Sainath has a serious rivalry with the family of the victim, and therefore, the applicant has been falsely implicated in the crime. Considering the material collected by the Investigating Officer, there is absolutely no material against the applicant that his custodial interrogation would serve the purpose. Hence, he may be released on bail.

6. Per contra, the learned APP has opposed the application. He would point out that the statement of the victim in the first information report, the history narrated to the medical officer, and the statement under Section 164 of the Cr.P.C. are consistent. The spot of the incident was not visible. Therefore, the statement of the so-called witnesses herein would not destroy the statement of the victim who has suffered. Continuous attempts have been made to apprehend the applicant, but he has been absconding since the

date of the incident. He has also referred to the opinion of the medical expert and argued that he has opined that the possibility of sexual assault cannot be ruled out. Howsoever the rivalry may be, a minor girl would not put her life at stake by making such false allegations. At this juncture, *prima facie* evidence is available against the applicant. The statement of the victim is corroborated by the medical evidence and the spot panchanama. The offence is serious. There is a danger to the life of the victim at the hands of the applicant and other co-accused. This Court, in the order dated 18.02.2022 passed in Bail Application No. 1700 of 2021, has specifically observed that the Medical Officer has opined that penetrative sexual assault cannot be ruled out. It was alleged to have been committed by the present accused, Astana Abbas Chavan. Therefore, the applicant cannot take advantage of the observations recorded by this Court in the case of co-accused. Considering the over all facts and the evidence, the application deserves to be dismissed.

7. The learned counsel for the victim has vehemently argued that four accused are still absconding. The entire family of the applicant is behind bars as Sainath's family has lodged a false report. The applicant has an apprehension of causing danger to her life at the hands of the applicant. The applicant/victim is a minor girl. She has no reason to lodge the false report. The offence is serious. Hence, the application may be dismissed.

8. Perused the charge sheet and the papers submitted by the learned counsel for the applicant. It appears that the specific allegations have been levelled against the applicant that he along with others, took the victim in a lemon tree garden, and the present applicant committed forceful sexual assault on her. The persons going down the road near the spot of the incident left her at the office of the Superintendent of Police. She was immediately taken to the police station, and she narrated the incident. Her statement is consistent with a statement under Section 164 of the Cr.P.C. Her statement also corroborated by the history narrated to the Medical Officer. The opinion of the Medical Officer is strongly against the applicant. Her hymen was also shown to be torn. At this juncture, the statement of the victim is material. So far as the three independent witnesses, as has been pointed out by the learned counsel for the applicant, is concerned, they may not be considered at this juncture for the reason that one witness cannot destroy the statement of another witness. Every statement is to be tested before the Court as per the legal provisions. The law is settled that the sole statement of the victim is sufficient if it inspires confidence. Therefore, at this juncture, the statements of the witnesses not supporting the prosecution cannot be given importance. The entire papers reveal that the incident happened and the victim has been sexually assaulted. The offence is serious. The possibility of danger to the life of the victim at the hands of

the accused cannot be ruled out. Considering the gravity of the offence and the material collected by the prosecution, this Court is of the view that the applicant is not entitled to anticipatory bail. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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