

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

BAIL APPLICATION NO.1192 OF 2022

Samadhan s/o. Shankar Ahire	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondent

Mr.M.R.Jadhav, Advocate h/f. Mr.D.S.Patil, Advocate for applicant

Mr.V.S.Badakh, APP for respondent assisted by Mr.A.R.Shaikh,
Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 16, 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.0222 of 2022 registered with M.I.D.C. Waluj Police Station, Aurangabad, for the offences punishable under Sections 376(2)(n), 506 and 201 of Indian Penal Code.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by the victim herself on 17.03.2022. It is her case that the applicant is son of her parental aunt. He, therefore, used to visit her residence. It was in

March, 2019, the informant had been to the house of the applicant. The applicant's mother was away from home. Taking advantage of no one home, the applicant had sexual intercourse with her by giving her false promise of marriage. Then, in November, 2021, the applicant asked the informant to marry him. She refused. He, thereupon, gave her threats of making her photographs viral. He took her to a lodge at Pandharpur (Aurangabad) and had sexual intercourse with her. It is also her case that her marriage was settled with one Manesh (Tushar). The marriage was scheduled on 23.03.2022. The applicant played spoilsport. He met Manesh and told him to have been in relationship with the informant. Manesh, therefore, refused to marry her. On investigation, charge sheet has been filed.

4. Learned APP and learned counsel for the intervenor would submit that the applicant has criminal antecedents. Attention of this court was adverted to the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, wherein the averments in the FIR have been reiterated. According to learned counsel, consent of the victim obtained under duress, is no consent in the eye of law and as such, the offence of rape is,

prima facie, made out against the applicant. Learned counsel, therefore, urged for rejection of the application.

5. Perused the FIR and the related papers. Considered the submissions advanced. The victim was 21 years of age. She was major when the alleged sexual intercourse took place in March, 2019. The applicant is none other than the son of her parental aunt. Reading between the lines indicate it to be a case of consensual relationship. The applicant had even asked the informant to marry him. She refused. True, the applicant has played spoilsport. He met the informant's prospective groom and their marriage, therefore, could not take place.

6. Since it appears to be a case of consensual relationship and on investigation, charge sheet has been filed, this court is inclined to grant the applicant bail.

7. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0222 of 2022 registered with M.I.D.C. Waluj Police Station,

Aurangabad, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount, for the offences punishable under Sections 376(2)(n), 506 and 201 of Indian Penal Code.

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

(iv) For a period of four months from today, the applicant shall not enter Talukas:Gangapur and Aurangabad, except for attending the court cases.

[R.G. AVACHAT, J.]

KBP

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

**CRIMINAL APPLICATION NO.2668 OF 2022
IN BAIL APPLICATION NO.1192 OF 2022
(X Y X Vs. State)**

Mr.A.R.Shaikh, Advocate for applicant
Mr.V.S.Badakh, APP for respondent no.1
Mr.M.R.Jadhav, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 16, 2022**

ORDER :-

The application is allowed. The applicant is permitted to assist learned APP during hearing of the Bail Application.

[R.G. AVACHAT, J.]

KBP