

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

BAIL APPLICATION NO. 1195 OF 2022

Bharat Janardhan Shahane

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. D.A. Mane, Advocate h/f Mr. Umesh Bodkhe Patil, Advocate for applicant
Mr. V.S. Badakh, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT, J.
DATE : 22nd 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. 391 of 2022 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 420, 406, 498A, 323, 504 and 506 read with Section 34 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 10th May, 2022. The F.I.R. runs into number of pages. The gist of the F.I.R. is that the

informant was residing at Kukana, Tq. Newasa. She took her education upto 6th standard at Parbhani. The applicant was her classmate at Parbhani. In May 2019, the applicant had made a phone call to the informant and gave reference of their acquaintance that dates back to their school days. Again acquaintance between the applicant and the informant developed. The family members of the applicant and other relations also got acquainted with the informant. They had been to the house of the informant at Kukana and even stayed overnight. It is further alleged that the informant reposed confidence with the applicant. The applicant and his family members suggested the informant that she may shift to a city like Pune. They suggested to sell her property and buy some piece of land in Pune. It was also suggested to her that she may construct some rooms on the plot to be purchased and can earn rent therefrom as a support during her old age. The informant, therefore, sold her land at village Bhenda. The applicant showed her some plots in Pune. She approved a 2000 sq. ft. plot at Shivne in Pune. The informant agreed to buy the same for Rs.40 lakhs. She paid the said amount to the applicant. He however, avoided to ensure sale-deed is executed in the informant's favour.

4. It is then alleged in the F.I.R. that in September 2019, the applicant and co-accused - Suresh Shahane had come to the informant's house at Kukana. They stayed overnight there. The informant slept in her

bedroom. The applicant and Suresh slept in another room. By 02.00 in the night, the applicant knocked the door of bedroom of the informant. The applicant entered the bedroom. Co-accused – Suresh bolted the door from outside. The applicant had sexual intercourse with the informant without her consent and against her wish. The applicant had abused and threatened her that time. Thereupon, the informant had decided to lodge a report with the police. Suresh however, intervened and promised her that he would ensure the marriage between her and the applicant takes place. As such, on 11th December, 2019 marriage between the informant and the applicant took place in a temple at Kukana. Relations of the applicant and the informant were present. The applicant then took a premises on rent in Pune for the informant's residence. The applicant would maintain both, the first wife and the informant as well. After some days, the applicant and his family members started ill-treating the informant. The informant's gold ornaments were taken away by the applicant's first wife. The informant started demanding Rs.40 lakhs paid to the applicant. The applicant, therefore, executed one agreement on 04th August, 2021. He agreed to sell his property (rooms) at Warje to the informant. He however, did not execute the sale-deed. Based on the F.I.R., crime came to be registered.

5. Learned counsel for the applicant would submit that the applicant is in jail since 13th June, 2022. On investigation, charge-sheet has

been filed. The dispute between the applicant and the informant is of civil nature. According to the informant herself, she had married the applicant. The alleged incident of rape dates back to September 2019. The informant has filed a complaint under Section 138 of Negotiable Instruments Act (“N.I. Act”) against the applicant for recovery of amount under the cheques issued by the applicant. He, therefore, urged for grant of application.

6. Learned A.P.P. would, on the other hand, submit that from day one the applicant had an intention to dupe the informant. He received a sum of Rs.40 lakhs, but has not paid the same back. This is nothing short of an economic offence. In spite of having a wife living, the applicant established relationship with the informant. Learned A.P.P., therefore, urged for rejection of the application.

7. Considered the submissions advanced. On investigation, charge-sheet has been filed. It will take time for commencement and conclusion of trial. I did not reiterate the allegations in the F.I.R. Suffice it to say, averments in the F.I.R. referred to hereinabove lead this Court to grant the applicant bail. This Court has perused a demand notice issued on behalf of the informant calling upon him to pay the amount covered by the cheques. The averments of notice and allegations in the F.I.R. appear to be at variance. These are prima facie observations. Neither the trial Court, nor the

Court dealing with the matter of Section 138 of N.I. Act, shall be influenced by these observations.

8. For all the aforesaid reasons, 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. 391 of 2022 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 420, 406, 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code, on executing PR. 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