

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

BAIL APPLICATION NO. 1229 OF 2022

Shaikh Jafar Shaikh Kaisar	... Applicant
Versus	
The State of Maharashtra and another	... Respondents

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Mr. A. S. Shejwal, Advocate for applicant
Mr. R. B. Bagul, APP for respondent No.1 – State
Ms Aparna Sapate, Advocate (appointed) for respondent No.2

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CORAM : R. G. AVACHAT, J.
DATED : 08th SEPTEMBER, 2022

. This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0265/2022, registered at M.I.D.C. CIDCO Police Station, Aurangabad, District Aurangabad, for the offences punishable under Sections 376(3), 376(2)(n), 506 r/w 34 of the Indian Penal Code and under Sections 3, 4, 7, 8, 12 and 17 of the POCSO Act.

2. Heard. Perused the First Information Report (FIR) and related papers.

The FIR has been lodged by the victim herself on 12.07.2022. She claims to be 15 years and 10 months old at the time

of lodging of the FIR. It is her case that she got acquainted with the co-accused Rizwan, three years before. Acquaintance developed into emotional relationship. The mother of co-accused Rizwan had come to her residence to ask her parents for marriage of Rizwan with the informant. The informant asked Rizwan to wait until she completes 18 years of age. Rizwan, however, got married with some other girl in January, 2022. The informant, therefore, asked him not to approach her any longer. The co-accused Rizwan, however, threatened her of making her photographs viral. She, therefore, continued to talk to him on cell phone.

3. It is her case that when the informant stopped calling the co-accused Rizwan on cell phone, he came her home on 06.04.2022 by 4.30 p.m.. He beat up the informant and outraged her modesty. It was all done at the behest of the applicant's mother. A crime therefore came to be registered against both of them.

4. It is further her case that in July 2022, the informant experienced stomach pain. On medical examination, she was found to be pregnant. The informant then disclosed her mother that the co-accused Rizwan had been to her residence on 14.02.2022. She was alone home. The applicant was accompanied by his parents.

5. The applicant herein is the second husband of Rizwan's mother. Rizwan had sexual intercourse with her. On 18.02.2022, his mother had also assaulted her. She asked the informant to elope with Rizwan. It is further her case that while Rizwan was having intercourse with the informant, the applicant also wanted to sexually assault her. He had even removed his cloths. Meanwhile, the informant's younger brother was seen approaching home. The possible untoward incident came to be averted. The applicant, his wife and Rizwan gave her threats. They also threatened her to make her nude pictures viral.

6. The learned Advocate for the applicant would submit that the allegations in the FIR are concocted. The applicant is not alleged to have made any sexual assault. He is behind the bars for two months. His further custodial interrogation is unwarranted. He, therefore, urged for grant of bail.

7. The learned APP and the learned Advocate representing the victim would, on the other hand, submit that it is a serious offence. The co-accused is absconding. Investigation is still in progress. They, therefore, urged for rejection of the application.

8. Considered the submissions advanced. Perused the FIR and the related papers. I need not reiterate the averments in the FIR. Suffice it to say that the applicant is not alleged to have made any sexual assault. The application is in jail for little over two months. The case of the informant as has been averred in the FIR and referred to herein above, lead this Court to grant the applicant bail. Hence, following order:

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0265/2022, registered at M.I.D.C. CIDCO Police Station, Aurangabad, District Aurangabad, for the offences punishable under Sections 376(3), 376(2)(n), 506 r/w 34 of the Indian Penal Code and under Sections 3, 4, 7, 8, 12 and 17 of the POCSO Act, on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of the like amount.
- (iii) The applicant shall attend the concerned police station once a week i.e. on every Sunday between 11.00 a.m. and 12.00 noon, till conclusion of trial.
- (iv) The applicant shall not tamper with the prosecution evidence.
- (v) Fees of learned Advocate Ms Aparna Sapate (appointed) is quantified at Rs.6,000/- (Rupees Six Thousand).

[R. G. AVACHAT, J.]