

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

BAIL APPLICATION NO.1251 OF 2022

Banti s/o. Tabar Chavan	..Applicant
Vs.	
The State of Maharashtra	
and anr.	..Respondents

Mr.M.B.Humne, Advocate for applicant
Mr.A.V.Deshmukh, APP for respondent no.1
Mr.Sharad S. Shinde, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 12, 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.140 of 2022 registered with Bidkin Police Station, Aurangabad.

2. Heard learned counsel appearing for the parties.
3. The First Information Report (FIR) has been lodged by the victim herself on 09.04.2022. The victim was 34 years of age when the crime was registered. She was previously married. She has, however, not been residing with her husband. It is her case that she is residing with the co-accused – Nimbalkar in live-in relationship. The

applicant herein is her stepbrother. It is alleged that the applicant came her home on 07.04.2022 by 10.30 p.m. He had some talks with the co-accused – Nimbalkar. At the instance of the co-accused, she agreed to go with the applicant and the co-accused to the place of her sister at Mharol. The applicant was riding the motorbike, while the informant was pillion rider. On the way, he stopped at one *Khadani* (mining place). There, again both the applicant and the co-accused – Nimbalkar had some talks *inter-se*. At that time, the applicant expressed his desire to have sexual intercourse with the victim. It is the case of the informant that the the co-accused caught hold of her and the applicant committed rape. Thereafter, the co-accused – Nimbalkar committed similar act with her. As such, it is a case of gang rape.

4. Learned counsel for the applicant would submit that the co-accused – Nimbalkar has been granted bail. There is delay of two days in lodging of the FIR. The medical evidence is not helpful for the prosecution. The applicant is 25 years of age. On investigation, charge sheet has been filed. The learned counsel, ultimately, urged for grant of bail.

5. Learned APP and learned counsel appearing for the victim would, on the other hand, submit that it is a serious offence. Delay in lodging the FIR has been explained. The co-accused – Nimbalkar has husband-like relationship with the victim. The applicant cannot be benefited on account of grant of bail to the co-accused. Both learned counsel, therefore, urged for rejection of the application.

6. Perused the FIR and the related papers. The victim is 34 years of age. The applicant is 25 years of age. The applicant is stepbrother of the informant. She gave a supplementary statement, wherein she has even implicated her real brother, alleging that the incident took place at his behest. The similarly placed co-accused - Nimbalkar has been granted bail. The medical examination report does not give signs of forcible intercourse. On investigation, charge sheet has been filed. There is delay of two days in lodging of the FIR. It will take time for commencement and conclusion of the trial.

7. In view of the above, the Court is inclined to grant the applicant bail. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.140 of 2022 registered with Bidkin 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.

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

[R.G. AVACHAT, J.]

KBP