

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

922 BAIL APPLICATION NO.1646 OF 2021

**RAKESH @ RINKYA SANJAY PATIL
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Chaitanya C. Deshpande, Advocate for the applicant
Shri. A. V. Deshmukh, APP for the respondent/State
Smt. Archana Bhange, Advocate for respondent No. 2
(appointed)

**CORAM : M. G. SEWLIKAR, J.
DATED : 21st January, 2022**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 110 of 2021 registered with Dhule City Police Station, Dist. Dhule for the offences punishable under Sections 363, 366A, 376, 377, 354A, 354D of the Indian Penal Code, under Sections 4 and 8 of POCSO Act and under Sections 3(w)(i)(ii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989.

2. Victim was 17 years of age at the time of the incident. Informant is her father. She was not found in the

house on 17th May, 2021 in the night. He suspected that applicant must have kidnapped her. Thereafter, he lodged an FIR against the applicant.

3. Applicant and the victim were traced. Victim gave the statement that without her consent the applicant had penetrative sexual assault with her. Applicant had penetrative sexual assault with her 2-3 times without her consent. Therefore, offences as aforesaid came to be registered against the applicant.

3. Heard learned counsel Shri. Deshpande for the applicant, learned APP Shri. Deshmukh for the State and learned counsel Smt. Bhange for respondent No. 2 (appointed).

4. Shri. Deshpande submits that from the tenor of the statement of the victim, it is apparent that she was in love with the applicant. She was aware of the consequences of her actions. Moreover there is no evidence to indicate that

there was penetrative sexual assault.

5. Learned APP Shri. Deshmukh and Smt. Bhange, learned counsel submit that medical evidence shows that Medical Officer has opined that penetrative sexual assault cannot be ruled out. They submit that applicant was not of consenting age. Therefore, her consent is immaterial. In her statement of under Section 164 of the Code of Criminal Procedure she has given detailed account of the incident.

6. Charge-sheet is filed. On perusal of the charge-sheet it is seen that there was no injury on Labia majora and Labia minora. Hymen of the victim was intact. *Prima facie* there is no evidence of penetrative sexual assault. Considering the age of the applicant i.e. 25 years and the evidence on record and the charge-sheet is filed, I am inclined to release the applicant on bail. Applicant has no criminal antecedents. He has permanent place of residence. Applicant can be released by imposing certain conditions. In view of this, following order is passed.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount in connection with CR No. 110 of 2021 under Sections 363, 366A, 376, 377, 354A, 354D of the Indian Penal Code, under Sections 4 and 8 of POCSO Act and under Sections 3(w)(I)(ii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 registered with Dhule City Police Station, District Dhule, on condition that he shall not tamper the prosecution evidence, shall not enter the village of the informant and shall not keep any contact with the informant whatsoever till the conclusion of trial.
3. Application is disposed of.
4. Fees of the Amicus curiae is quantified at Rs. 5000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad
4. It is clarified that the observations made in the above order are restricted to the decision of this application

only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp