

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

BAIL APPLICATION NO. 1376 OF 2022

Uttam Shivaji Kadam

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. M.M. Parghane, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent no.1 – State
Ms. G.N. Syed, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT, J.
DATE : 03rd OCTOBER, 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. 2 of 2022 registered with Limbgaon Police Station, Dist. Nanded for the offences punishable under Sections 376(3) and 506 of the Indian Penal Code and under Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012.

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 8th January, 2022. It is her case that she was 12 years and 6 months old at the relevant

time. Her parents were working on a brick kiln. On 6th January, 2022 by 04:00 a.m., her parents went away at work place. The applicant, residing neighborhood, came her home. He committed sexual intercourse with her without her consent and against her wish. He then fled. On investigation, the charge-sheet has been filed.

4. According to learned counsel for the applicant, a false F.I.R. has been filed out of animosity. The medical evidence ruled out sexual assault. According to him, there is delay of two days in lodging the F.I.R. He, therefore, urged for grant of the application.

5. Learned A.P.P and learned counsel representing the victim would, on the other hand, submit that the victim was just twelve and half years of age at the relevant time. Her consent was, therefore, immaterial. Her medical examination report states sexual assault could not be ruled out. The informant has no reason to falsely implicate the applicant. They, therefore, urged for rejection of the application.

6. Considered the submissions advanced. True, the victim was just little over twelve years of age. There is however, delay of two days in lodging the F.I.R. The applicant resides in the neighborhood. He is twenty-three years of age. The medical examination report of the victim indicates there

was no evidence or any fresh genital or anal injury except old healed hymenal tears present. The medical officer opined that the evidence of sexual intercourse/assault could not be ruled out. As such, the medical examination report neither favours the prosecution nor is against it. The C.A. report doesn't support the prosecution, may be due to delay in medical examination or obtaining relevant concerned samples. In view of medical examination report of the victim and the fact that there is delay of two days in lodging the F.I.R., this Court is inclined to grant the applicant bail. More so, when the applicant is twenty-three years of age and on investigation charge-sheet has been filed.

7. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released on bail, in connection with Crime No. 2 of 2022 registered with Limbgaon Police Station, Dist. Nanded for the offences punishable under Sections 376(3) and 506 of the Indian Penal Code and under Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012, 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 enter village Rui, Tq. Kandhar, Dist. Nanded and village Pimpalgaon Koraka Shivar, Tq. & Dist. Nanded till conclusion of trial.

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

(V) Fees of Ms. G.N. Syed, learned counsel, is quantified to Rs.6,000/-.

(R.G. AVACHAT, J.)

SSD