

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

BAIL APPLICATION NO. 1439 OF 2022

1. Subhan Mahamad Kureshi
Age: 29 years, Occu.: Labour,

2. Nijam Samad Jamkhande
Age: 24 years, Occu.: Labour

All R/o Aurad (Shah), Tq. Nilanga,
Dist. Latur

..APPLICANTS

VERSUS

1. State of Maharashtra
Through Police Station Aurad (Shah),
Tq. Nilanga, Dist. Latur

2. X.Y.Z.

..RESPONDENTS

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Mr. T.M. Venjane, Advocate for applicants

Mr. A.V. Deshmukh, A.P.P. for respondent no.1 – State

Mr. A.A. Joshi, Advocate for respondent no.2

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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 applicants have been arrested in connection with Crime No. 53 of 2022 registered with Aurad-Shahajani Police Station, Dist. Latur for the offences punishable under Sections 363 and 366A read with Section 34 of the Indian Penal Code and under Sections 11(iv) and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. Heard. Perused the First Information Report (“F.I.R.”) and related police papers.

3. The F.I.R. has been lodged by father of the victim on 02nd April, 2022 alleging therein that his daughter, sixteen years old, went missing on 01st April, 2022. She had been to the school to appear for 10th standard examination but did not return home. On investigation it was found that Applicant No.1 allegedly kidnapped her. Applicant No.2 – co-accused had assisted him in kidnapping the victim. The statement of victim indicates that she was emotionally involved with Applicant No.1. Although in her statement she claimed to have been kidnapped, the reading between the lines indicates it is a case of elopement. Both of them had stayed together for about two days. After having been brought back, the victim in her statement does not attribute any sexual assault by Applicant No.1.

4. Learned counsel for Respondent No.2 – victim would submit that some videos of the victim with Applicant No.1 were made viral. He brought to the notice of this Court Section 23 of the POCSO, wherein it is mandatory to keep secret name of the victim. Anything in relation to the victim made public, a breach of the said provision is to meet with criminal consequences.

5. In view of this Court, if such act has been committed by any of the applicants, a charge in that regard may be framed by the trial Court and

may be dealt with accordingly. Applicant No.2 is alleged to have assisted Applicant No.1 in taking away the victim. It is reiterated that the victim left the house for appearing 10th standard examination. She even appeared for examination and thereafter did not return home. Learned counsel for the applicant may have a reason to contend that the victim on her own joined Applicant No.1 to go with him. Admittedly, on return, the victim does not attribute Applicant No.1 with any sexual assault on her. Both the applicants have been in jail since 04th April, 2022 i.e. for about six months. On investigation, the charge-sheet has been filed. It will necessarily take time for commencement and conclusion of trial. The Court is, therefore, inclined to grant the applicants bail.

6. 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 applicants be released on bail, in connection with Crime No. 53 of 2022 registered with Aurad-Shahajani Police Station, Dist. Latur for the offences punishable under Sections 363 and 366A read with Section 34 of the Indian Penal Code and under Sections 11(iv) and 12 of the Protection of Children from Sexual Offences Act, 2012, on executing PR. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.

(III) The applicants shall not enter Nilanga Taluka for next twelve months.

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

(R.G. AVACHAT, J.)

SSD