

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

BAIL APPLICATION NO.1522 OF 2022

Datta s/o. Tukaram Wagh	..Applicant
Vs.	
The State of Maharashtra	
and anr.	..Respondents

**AND
BAIL APPLICATION NO.1430 OF 2022**

Sunil s/o. Madhavrao Kharate	..Applicant
Vs.	
The State of Maharashtra	
and anr.	..Respondents

Mr.N.S.Ghanekar, Advocate for applicant
Mr.A.V.Deshmukh, APP for respondent for respondent no.1
Ms.Sayali Kulkarni, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 30, 2022**

ORDER :-

Both these applications under Section 439 of the Code of Criminal Procedure, since arise from one and the same crime, are decided by this common order. The applicants have been arrested in connection with Crime No.0154 of 2022 registered with Phulambri Police Station, Dist. Aurangabad, for the offences punishable under

Sections 363, 376-D, 376(2)(N), 376(2)(L), 376(2)(J) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by the victim herself on 29.05.2022. She claimed to be 17 years of age. It is her case that about four days before 29.05.2022, she was alone home. It was 2:00 p.m. She came out of her house to see the applicant – Dattu present on the terrace of the house of his maternal grandfather – Rajaram Lahane. Dattu called her with gestures. The victim/informant, therefore, went towards the house of Rajaram Lahane. The applicant – Dattu came down. He took the victim to nearby a sugarcane field and committed rape of her. He asked her to remain there for a while. He left and immediately came back with the applicant – Sunil. He asked the victim to allow Sunil to do with her what he had done with her immediately before. Sunil also did the same thing. She claimed to have not informed the same to anyone as she was frightened. Both the applicants thereafter went away.

4. It is further case of the victim that by 09.00 p.m. on 29.05.2022, she went to sleep along with her grandmother outside of her house as those were days of summer. She realised that someone was waking her up. She woke up to find both the applicants by her side. They pressed her mouth, took her away with them on a motorbike to a secluded place and committed sexual intercourse with her without her consent and against her wish. She then realised to have been brought towards Ajintha. It was a time of daybreak. Both the applicants took her to a hotel for breakfast. Both the applicants left her company one after another. One unknown person inquired with her. She told him what happened with her. That person took her to a nearby police station. The victim's uncle was called. He took her to Phulambri Police Station. She lodged the FIR there.

5. Both the applicants came to be arrested. The victim and the applicants were medically screened. During investigation, the victim gave number of statements. On investigation, charge sheet has been filed.

6. Learned counsel for the applicants took this Court through each and every statement of the victim and her medical examination reports, to ultimately urge for allowing the applications. According to learned counsel, the applicants are just 21 years of age. The victim was of the age of understanding.

7. Learned APP and learned counsel for the victim/informant would, on the other hand, submit that it is a case of gang rape. Although there is some variance in the statements of the victim, she is consistent with her case against the applicants. According to learned counsel for the victim, the nature had already played with her as she is mentally differently abled. The Investigating Officer was not fair enough. He ought not to have recorded the victim's statement each time. Learned counsel would further submit that the prosecution is ready to lead evidence immediately. The trial Court may be requested to frame charge and conclude the trial within time frame. Learned APP and learned counsel for the victim/informant, therefore, urged for rejection of the applications.

8. Considered the submissions advanced. Perused the FIR and the papers of investigation relied on.

9. The victim was 17 years of age at the relevant time. Her statement indicates to have had acquaintance with the applicant-Dattu. She was emotionally involved with him. What is her case in the FIR, has already been referred to herein above. Her further statements need to be adverted to.

10. The victim herself gave history to the Medical Officer just before she was medically screened. The history given by her reads thus:-

“ History as narrated by the survivor herself, the survivor's boy friend (assailant) and his friend had performed penovaginal intercourse on the survivor yesterday night at 1 am. The survivor got acquainted with the assailant through her maternal uncle's side 5 years back when she was 12 years old when he proposed her but she did not accept the relationship at that time. The assailant Dattu stayed 4-5 house nearby to the survivor and he used to follow her everyday till she accepted her relationship due to the force by the assailant. The assailant had given the survivor a mobile phone for calling him everyday some 15-20 days back. The assailant had clicked some photos with the survivor and he threatened her that if she did not accept the relationship with him he would show those photos to everyone and so she accepted the relationship

with him. He used to say that he would marry the survivor but the survivor wanted to marry another guy named Sunil who was Dattu's friend (assailant's friend). Survivor used to go with the assailant multiple times near a farm nearby Dnyeshwarwadi, Pal at Phulambri by force and the assailant had performed forceful penovaginal intercourse with the survivor and along with his friend sometimes. Survivor was planning to marry Sunil (assailant's friend) but he did not approve relationship with survivor and survivor gives history of assailant Dattu forcing her to run away with him. Hence yesterday at 12 am., the assailant Dattu kidnapped her from her house to some unknown place and performed sexual intercourse on her and after that they ran away with her to Jalgaon and reached by morning 7 am. Both assailant and his friend Sunil left the survivor alone there and ran away. The police found her there through a nearby acquaintance and brought her to GMCH for further examination. Last episode of sexual assault was by Dattu yesterday night at 1 am."

11. The medical examination report of the victim reads - there are some signs of force used, however, sexual intercourse cannot be ruled out. Final report reserved after availability of F.S.L. reports.

12. Admittedly, the F.S.L. reports have not been received so far. During investigation, the victim was examined by Psychiatrist. Her examination report would indicate that she has mild intellectual disability (mild mental retardation). Another certificate indicates her

to have suffered 54% of mental retardation. It has also been reported that the victim may not be able to identify a person, whom she had seen earlier.

13. The applicant – Dattu is serving in Pune. The Investigating Officer has collected some evidence from the applicant's work place to indicate that he was on duty on the days, on which he is alleged to have committed rape of the victim, i.e. on 26.05.2022 and 28.05.2022. Learned counsel for the applicants, therefore, contended that the victim gave a supplementary statement on 09.06.2022, that she does not understand the day and date. She then claimed to have been sexually exploited by both the applicants five days before the date, on which they kidnapped her.

14. The statement of the victim was recorded under Section 164 of the Code of Criminal Procedure. In the said statement, she has stated that the applicant – Dattu had proposed her. She, initially, refused his proposal. In summer, he had come to his maternal grandfather's house in the village. The maternal grandfather resides in the nearby the house of the victim. The applicant – Dattu had given the victim a cellphone. Both of them

used to talk with each other on cellphone. Once her brother found her in possession of cellphone. She, therefore, returned it to the applicant – Dattu. On Friday by 02.00 p.m., applicant – Dattu had made some gestures and called her. He then took her to a nearby sugarcane field and committed rape of her. So far as regards the incident regarding kidnapping is concerned, the victim states that it was Saturday. As it was summer, she went to sleep along with her grandmother in their field. She woke up by the touch of someone. She noticed both the applicants around. They covered her mouth with handkerchief. She became unconscious. On having gained consciousness, she realised to have been at a hilly place. Both the applicants committed rape of her there. They, then, took her towards Ajintha and went to a hotel for breakfast. Both the applicants then left her alone. She further states that the applicant - Sunil had told her that he did not take decision on his own (to be specific – he was mad). He would do whatever the applicant – Dattu ask him to do. It is further in her statement that she had desire to marry with Sunil. The applicant - Dattu was, however, asking him not to marry her. He (Dattu) too was not willing to marry her. The applicant - Sunil had once asked her to join him to get married at Pune. The applicant – Dattu, however, prevented him. She then

states that applicant – Dattu was responsible for everything she has suffered. He may be hanged. The applicant - Sunil be let off although he (Sunil) committed wrong. Same, however, is done at the instance of applicant – Dattu.

15. The victim again gave her statement on 08.07.2022. She states therein that she was dropped by her father at the house of her maternal grandmother at Malodyachi Wadi. She used to talk to applicant - Dattu on cellphone everyday. The applicant - Sunil also used to join on conference call. Once her maternal aunt, Mangal, had caught her while talking on cellphone. The victim told her to have been talking to her friend – Pooja. Mangal made a phone call on the number appeared on the screen. The call was received by the applicant – Dattu. Mangal then realised that it was applicant - Dattu, who was residing in the nearby of her residence. The parents of the victim, therefore, came to the village and took her back to their village, Kabadyachi Wadi.

16. The victim further states that she made a phone call to one Imran and told him that she wanted to leave her house. She had acquaintance with Imran. She requested him to assist her. He refused. It was 9.00 p.m. of Saturday, she was sleeping just outside

of her residence. She could not catch sleep. It was 12 midnight. She thought that she was a trouble to her parents. To avoid same, she decided to leave the house. She, therefore, got up and started walking towards Phulambri road. At Phulambri, she took one auto-rickshaw. The auto-rickshaw driver took her to Ajintha side. The tyre of the auto-rickshaw got punctured. She then boarded another auto-rickshaw. She did not have money with her. She asked the first auto-rickshaw driver to pay her some money. He paid. The another auto-rickshaw driver dropped her at one place. It was morning time. She took breakfast at one hotel. She met one lady there. After some time, crowd gathered. The police arrived. She was taken to Pahur Police Station. She states that it was applicant – Dattu, who committed rape of her many a time. The applicant – Sunil did nothing with her.

17. The applicants are in the age group of 21 years. On investigation, charge sheet has been filed. It will take time for commencement and conclusion of trial. True, the victim had suffered an ordeal. What she stated might be true. The Court does not propose to observe anything more but finds it to be a case for grant of bail to the applicants.

18. Hence, the following order:-

(i) The applications are allowed.

(ii) The applicants be released on bail in connection with Crime No.0154 of 2022 registered with Phulambri Police Station, Dist. Aurangabad, for the offences punishable under Sections 363, 376-D, 376(2)(N), 376(2)(L), 376(2)(J) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

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

[R.G. AVACHAT, J.]

KBP