

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

923 BAIL APPLICATION NO.1770 OF 2022

SHIVAJI UDDHAV PANDHARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Chondhekar Balaji S.
APP for Respondent-State : Mr. K. S. Patil.
Advocate for Respondent No.2/Complainant : Mr. P. S. Koshti
(Appointed).
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CORAM : S. G. MEHARE, J.
DATE : 29.11.2022

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and the counsel appointed for respondent No.2/complainant.

2. Learned counsel for the applicant would argue that the co-accused has been released on bail having similar allegations. Hence, parity may be extended to the applicant. There is inordinate delay in lodging the report. The prosecution case rests upon the oral dying declaration, which is a weak piece of evidence. The applicant is languishing behind the bar for sufficient period. He is a young boy of 20 years. The allegations supported with so called evidence does not appear probable. Hence, he may be released on bail.

3. Learned APP opposed the application contending that there are oral dying declaration to her parents and a teacher, that is a strong evidence against the applicant.

4. Learned counsel appearing for respondent No.2/ complainant has referred to Section 12 of the POCSO Act and argued that the presumption is in favour of the deceased. The offence is serious. Hence, the application may be dismissed.

5. It is not in dispute that the deceased consumed the rat killing powder on 23.05.2022. However, the parents did not disclose even to the Doctor that she had consumed the rat killing powder. The reasons for non disclosure of consuming the rat killing powder is a matter of evidence. She was under the treatment till 25.05.2022. Except the oral dying declaration, there was no evidence against the applicant. The co-accused has been granted bail by this Court by the order dated 07.10.2022 passed in Bail Application No.1597 of 2022.

6. Considering the allegations levelled against the applicant and delay in disclosure about consuming the rat killing powder to the doctor, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **SHIVAJI UDDHAV PANDHARE** be released on bail on furnishing P.B. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety of the like amount, in Crime No.163 of 2022, registered by Police Station Sengaon, District Hingoli, for the offences punishable under Sections 306, 354-D read with Section 34 of the IPC, Section 3(1)(w), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 12 of the Protection of Children from Sexual Offences Act, on condition not to tamper with the prosecution witnesses.
- (iii) The Secretary, High Court Legal Services, Sub-Committee, Aurangabad do pay the legal fees to advocate Koshti as per the schedule.

(S. G. MEHARE, J.)

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