

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

921 BAIL APPLICATION NO.1793 OF 2022

ASHOK ANANDA BARDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Narwade Narayan B.
APP for Respondent-State : Mr. K. S. Patil.
Advocate for Respondent No.2 : Ms. Manushri Shendge.

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CORAM : S. G. MEHARE, J.
DATE : 16.12.2022

PER COURT :-

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

2. The applicant is married having three children. The victim was 14 years and 3 months old at the time of the incident. They got acquaintance while grazing the sheeps. The applicant and victim resided together for about one month. The brother of the applicant took them from the place of their residence and then she was handed over to the custody of her mother and maternal uncle.

3. The applicant claims bail only on the ground that medical evidence is lacking. The Medical Officer has not expressed the

opinion in the medical investigation report. The applicant and the victim had affair. She had a consensual sex with him. The charge sheet has been filed. There are no antecedents to his discredit. He may be granted bail.

4. The applicant has been opposed on the ground that the victim was below 15 years. Therefore, offence is aggravated. Her consent is immaterial. The applicant was married and having three children. The statement of victim under Section 164 of the Cr.P.C. cannot be doubted. Considering the gravity of the offence, application may be rejected.

5. It is not in dispute that the victim was below 15 years old. The applicant took her with him without consent of her parents. They stayed together for about one month. The allegations of the victim reveals that the applicant did sex with her, when they were living in one field together. Though the Medical Officer did not express opinion since it was reserved, but the medical examination reveals in toto that the sex had done with her for a period of one month when the victim was in the custody of the applicant. Then, it may be presumed that he did sex with her. Since she was below 18 years, her consent is immaterial. It has been alleged that he did repeated sex with the victim, who was below 16 years. The offence of such a

nature is punishable with rigorous imprisonment for terms which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for remainder of that persons's natural life, under Section 376(2) (i) of the IPC. Since she was below 18 years, her consent is immaterial. The applicant is married and was 25 years old at the time of the incident. They were grazing sheep in the field. Therefore, possibility of tampering with the evidence cannot be denied.

6. For the above reasons and considering the gravity of the offence, the application stands dismissed.

7. The Secretary, High Court Legal Services, Sub-Committee, Aurangabad to pay the legal fees to advocate Shendge as per the schedule.

(S. G. MEHARE, J.)

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vmk/-