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

BAIL APPLICATION NO.1859 OF 2022

**NAGYA @ NAGNATH AVCHIT KALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Applicant : Mr. Zambare Sudheer R
APP for Respondent/State : Mr. S.B. Narwade
Advocate for Respondent No.2 : Mr. N.B. Narwade

...

CORAM : S.G. MEHARE, J.

DATED : 06th DECEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent no.2.
2. Learned counsel for the applicant would submit that a false report has been lodged against the applicant since the daughter of the applicant had lodged a report against the family members of the complainant. They pressured the applicant and his family to take the said case back. However, the applicant and his family did not respond. Hence, they have cooked up a false story of sexual assault against the applicant. Complainant took advantage of her age. She was 14 years old at the time of the alleged incident. He would point out that the victim contradicts the material fact of locking the door inside and outside. Referring to the CCTV footage, he would argue that at the time of the alleged incident, the applicant and his wife

were at Shevgaon. The alleged spot of the incident was around 25 km away from the place of their residence. It was impossible for the applicant to reach the spot of the incident in a few minutes. He would submit that there was no medical evidence to corroborate the allegations. Since the family of the complainant was involved in the serious crime, the applicant had no reason to go to the house of the victim. The life of the victim has been put at stake to save the life of the family of the complainant. Referring to the material documents collected by the police machinery, he claimed bail.

3. Learned APP and learned counsel for the victim have vehemently argued that though the applicant was seen in CCTV footage at 08.45 pm, he was absent and not seen in CCTV footage. The distance from the place of his residence and the spot of the incident was not far away. The applicant and his family could reach the spot of the incident in a few minutes. The medical report supports the prosecution case. The exact time of the incident from a child of 14 years cannot be expected in FIR and gave the approximate time of the incident in the FIR. The applicant cannot take advantage of the time given in FIR and the time he was seen in CCTV footage. Referring to the medical report and the statement of the victim, they have prayed to dismiss the application.

4. Perusal of the documents reveals that at the alleged time of the incident, the applicant and his wife were at Shevgaon, which

was undisputedly around 25 km from the alleged spot of the incident. In the absence of CCTV footage, an inference of his absence at his residence at the time of the alleged incident cannot be drawn. The other CCTV footage reveals that the applicant was leaving his residence at Shevgaon in the morning. At that time, the applicant was residing on one construction site. It is a matter of common knowledge that the labour sleeps and wakes up early. A perusal of the facts and material on record, the presence of the applicant on the spot of the incident, is doubtful. Hence, the blood on the clothes of the victim and the ruptured hymen does not corroborate the victim's statement. The medical evidence also does not fully support the allegations levelled against the applicant. There are contradictions in her statement regarding the locking of her house door. At one place, she states that the wife and son of the applicant locked the door from outside the house, and at another, the applicant locked the door from inside the house. The material on record *prima facie* raises doubt about the statement and the report of the victim. In view of that matter, the Court is of the view that though the offence is serious, the applicant has a good case for bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Nagya @ Nagnath Avchit Kale, be released on bail on executing PB. and S.B. of Rs.50,000/- (Rupees fifty thousand)

(4)

with one solvent surety in the like amount in connection with Crime No.663 of 2022, registered at Pathardi Police Station, District Ahmednagar for the offence punishable under Sections 376(2), 376(2)(n), 376(2)(j), 376(3), 506, 201 r/w 34 of the Indian Penal Code and under Sections 4, 6, 12, 17 of the Protection of Children From Sexual Offences Act, 2012, on the condition that the applicant shall not tamper with the prosecution witnesses.

(iii) The applicant shall not enter the victim's village.

(iv) The applicant shall attend the trial on every material date of hearing.

(S.G. MEHARE, J.)

Mujaheed//