

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.77 OF 2023

SHAILESH TULSIRAM TUPE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent : Mr. S. P. Deshmukh

...
WITH
BAIL APPLICATION NO.140 OF 2023

BHARATBHUSHAN NARAYAN VISPUTE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Abhaysinh K. Bhosle
APP for Respondent : Mr. S. P. Deshmukh

...

CORAM : S. G. MEHARE, J.

DATE : 01-02-2023

PER COURT :-

1. Heard the learned counsel for the applicants and the learned A.P.P. for the respondent/State.
2. It is a case of forcible sex with a major mentally challenged girl. She was abandoned. Hence, the police admitted her to the old age home run by the first informant. Serious allegation of committing sex with the said girl is levelled against the applicant and his friend. The old age home is on the immovable property of the applicant Shailesh. As per the argument, old age home was

constructed on the land owned by the applicant Shailesh. However, it was leased to the first informant, who is the aunt of the applicant. She did not pay him the rent. Therefore, the applicants had quarrel with her. The applicants used to go the old age home. Therefore, the persons residing there were knowing them. The aunt took the U-turn and started claiming ownership over the land of the applicant Shailesh. To grab the immovable property of the applicant Shailesh, the aunt played a game and implicated him in a false crime. The medical report is totally silent. Even hymen was not torn. On the contrary, on the day of medical examination of the victim, some foreign articles like stone, seed, paper and plastic were discovered in her private part. The witnesses are got up and they have narrated the unbelievable story. The witnesses are inconsistent on the facts. However, the care taker did not support the prosecution.

3. The learned counsel for the applicants fairly admitted that the offence is serious but the reason for implicating the applicants, is the dispute over the land with the first informant. He has also argued that one case under the Immoral Traffic (Prevention) Act, 1956 is registered. Hence, the first informant took disadvantage and trapped the applicant in a false case. The material investigation has been completed. Hence, the applicants claimed bail.

4. The learned A.P.P. has strongly opposed the applications. He would submit that the victim is mentally challenged girl. Hence, she would not state against the accused. However, presence of the applicants on the spot of the incident is apparent. The witnesses are independent. They have no interest either in the first informant or the applicant. The eyewitnesses cannot be discarded. Therefore, they may not be granted bail.

5. Considering the allegations and the mental condition of the victim, *prima facie* appears that the offence is serious. The spot of the incident is the old age home. Many old aged persons were residing there. The incident allegedly happened in the early hours of the night. The so-called eyewitnesses are inconsistent. In the presence of such a large number of old persons in the old age home, committing forceful sex, appears improbable. That apart, the hymen was also not torn. Had there been really sex, there must have been some signs. In the absence of medical evidence, it raises serious doubt about the alleged incident. In such a situation, though the victim was mentally challenged, the applicants cannot be detained in jail. There may be a dispute between the applicants and the first informant. For the above reasons, the applications are liable to be allowed. Hence, the following order:-

i) The applications are allowed.

- ii) Applicant Shailesh Tulsiram Tupe in B.A.No.77 of 2023 and applicant Bharatbhushan Narayan Vispute in B.A.No.140 of 2023, be released on bail, on furnishing PB and SB of Rs.50,000/- each, with one solvent surety of like amount each, in C.R.No.275 of 2022 registered with Khultabad Police Station, District Aurangabad, for the offences punishable under Sections 376(2)(I), 376(j), 376(d), 504 and 506 read with Section 34 of the Indian Penal Code, on the conditions that,
- (a) They shall not enter the concerned old age home till conclusion of the trial.
- (b) They shall not contact the victim or any other prosecution witnesses till the conclusion of the trial.

(S. G. MEHARE)
JUDGE

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