

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

BAIL APPLICATION NO.150 OF 2023

RAJESH ASHOK SONAWANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Ippar Pawan K.
APP for Respondent No.1: Mr. S. P. Sonpawale
Advocate for respondent No.2 : Mr. V. M. Lomte (appointed
Through Legal Aid)

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CORAM : S. G. MEHARE, J.

DATE : 28.03.2023

PER COURT :

1. Heard the learned counsel for the applicant, learned A.P.P for respondent/state and learned counsel for the respondent No.2/victim.

2. The prosecution case is that the victim had affair with the her paternal brother. They were intending to marry, therefore, the victim fled away with him. The applicant accompanied them. In the mid way, her brother left and then she went ahead with the applicant. The applicant threw the sim card of the Mobile Hand Set of her brother. It has been alleged that he took her in a lonely hut. He did sex with her. Thereafter he asked her if her brother would not come with money, they would marry. He used to press her chest. The police captured applicant and the victim. She made

allegation of forcible sex with her.

3. The applicant has a case that he never did forcible sex with her nor touched her. He was supporting her and her brother for their marriage as the mother of the victim was not in their favour. He took her care. He also took her to the hospital when she fell ill. Her brother did not return. The police on the report of her mother apprehended them. Her statement under Section 164 of the Cr.P.C was tutored. Her immediate statement before the Medical Officer is true. She did not narrate about the forcible sex with her. The medical report also does not support her contentions that applicant did forcible sex with her. The applicant has been made scapegoat under the pressure of police. As per ossification test, she was between 15 to 17 years. If the margin of error to the age determined by doctor in ossification test is applied, she was above 18 years. She was major. Hence, POCSO Act would not apply. In the circumstances, he deserve bail.

4. The learned A.P.P and the learned counsel for the complainant has vehemently opposed the application. The mother of the victim has also addressed a letter to this Court dated 27th March 2023 objecting for bail. She has expressed the apprehension of tampering with the prosecution witnesses.

5. The learned counsel for the victim would argue that she was minor at the time of incident. The applicant took

disadvantage of the situation and did forcible sex with her. She is the best witness to the incident. The offence is serious. The applicant was 29 years old and the victim was 16 years old. The applicant has committed the serious offence. Hence bail may not be granted to him.

6. Perused the papers. The prosecution has no age proof of the victim except her ossification test. Ossification report reveals that she was between 15 to 17 years. Margin of error of two years plus has to be considered in favour of the accused. If it is considered, the victim may be between 18 and 19 years. Her first statement before the Medical Officer does not disclose that applicant did forcible sex with her. She had barely alleged that he pressed her chest. The medical report of the victim also does not support the prosecution that she was sexually assaulted. Considering the facts and circumstances of the case, the applicant deserves bail. Hence, the order :-

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant Rajesh Ashok Sonawane be released on bail on furnishing P. B. and S.B. of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No 97/2022 registered with Police Station Chopda Gramin Dist. Jalgaon for the offences punishable under Sections 363, 3660A, 376(2) I,j,k,l,m,n read with section 34 of

the Indian Penal Code on the following conditions :-

- (a) The applicant shall not tamper with the prosecution witnesses.
- (b) The applicant shall not contact the victim or her mother till conclusion of the trial.
- (iii) The Secretary, High Court Legal Services Subcommittee Aurangabad to pay the fees to the learned counsel appointed for respondent No.2/victim, as per the schedule.

(S. G. MEHARE)
JUDGE

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