

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

BAIL APPLICATION NO.217 OF 2023

**BALAJI SHIVHARI BABAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Applicants : Mr. S. S. Rath
APP for Respondent No.1: Mr. S. B. Narwade
Advocate for respondent No.2 : B. N. Magar

....

CORAM : S. G. MEHARE, J.

DATE : 10.03.2023

PER COURT :

1. Heard the learned counsel for the applicant, the learned A.PP for respondent No.1 State and the learned counsel for respondent no.2/ the victim.

2. The prosecution has a case that applicant No.1 eloped with the victim without knowledge and information of her parents. The victim was pregnant from applicant no.1. She was carrying 24 weeks pregnancy. When she went with applicant No.1, within two days they returned back. The foetus has been aborted and sent for DNA test. The applicant was minor at the time of intercourse. The offence is serious.

3. The learned counsel for the applicant would argue that applicant No.1 and victim had love relationship. He never forced her to have a sex. As per her statement, it was a solitary incident of the sex. The applicant never did forceful sex. She was around 17 years plus at the time of the alleged incident. The victim eloped with him at her own accord. At the time of alleged incident the applicant No.1 was also 19 years old. When pregnancy came to the light, the family members of the victim started hue and cry. Therefore, the victim asked applicant no.1 to take her with him. However, due to apprehension of police, they returned back. He read the statement of the victim recorded under Section 164 of the Cr.PC. He would also argue that there is absolutely no role of applicant No.2. He has been falsely implicated in the crime, hence, bail may be granted.

4. The learned A.P.P. would argue that the victim was minor at the time of the incident. She has made specific allegations against applicant No.1 that he asked her to have sex with her. He did sex with her and she got pregnant. It is clear cut case of atrocity against the woman. Considering, the gravity of the offence, bail may not be granted to the applicant.

5. The learned counsel for respondent No.2/the victim has vehemently argued that the victim was minor at the relevant time. He had instructions that the victim is mentally ill, but no documentary evidence is produced. He read the statement of one of the relatives of applicant No.1 and argued that family has *modus operandi* to elope with minor girl and perform the marriage. When the offence was committed, the victim was a minor girl. The offence is serious, life of the victim has been spoiled and she has been defamed in the society. Hence, bail application be rejected.

6. The statement of the victim under Section 164 of the Cr. P. C reveals that it was solitary incident of sex. They were only talking on phone for two years. Her parents did not notice the pregnancy of a girl up to 24 weeks. This goes to show that something has been suppressed. The victim never complained that she was sexually exploited. On the contrary, it reveals that she had love affair. Her statement also reveals that she left the home telling her parents that she was going to college. It further indicates that she went with the applicant willingly. The foetus has been aborted. There is nothing against applicant No.2, except he being the brother of applicant No.1. The conduct of the victim reveals that she was well aware of the act she was committing. She was in advanced age to take an appropriate

decision but possibility of intervention of family members cannot be denied. The investigation has been completed. Nothing is to be recovered from the applicant. The trial may take its time. The applicants are also young boys. Hence, it would be inappropriate to keep them behind bar. In the facts and circumstances of the case, the application deserves to be allowed. Hence, the following order.

- (i) The application is allowed.
- (ii) Applicant No.1 Balaji Shivhari Babar and applicant No.2, Madhav Shivhari Babar shall be released on bail, on furnishing P. B. and S.B. of Rs. 50,000/- (Rupees Fifty Thousand only) each, with one solvent surety of the like amount each, in Crime No. 290 of 2022, registered at Aundha Nagnath Police Station, Taluka Aundha Nagnath District Hingoli, for the offences punishable under Sections 376, 376(n), 363, 366, read with Section 34 of the Indian Penal Code and Section 3, 4, 5 and 6 of Protection of Children From Sexual offences Act, on the conditions that,

- (a) They shall not tamper with the prosecution witnesses.
- (b) They shall not contact the victim and her parents till conclusion of the trial.
- (c) They shall not enter village Perjabazar, Taluka Aundha Nagnath, District Hingoli, till the conclusion of the trial.

(d) They shall attend the trial on every effective date.

(S. G. MEHARE)
JUDGE

ysk