

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.293 OF 2023

AKSHAY @ RAJESH DNYANBA @ DILIP BANSOD
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Satej S. Jadhav
APP for Respondent No.1/State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Chandrakant V. Thombre
(Appointed)

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CORAM : S. G. MEHARE, J.

DATE : 16-03-2023

PER COURT :-

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

2. It is the case of alleged forcible sex. The victim alleged that the accused took her from one shop on his bike convincing her that he wanted to show her something. That time her friend was also with her. He took her to a lonely place in a forest and did sex against her will.

3. The learned counsel for the applicant would argue that the applicant and the victim had affair. However, her family was opposing their relationship. Many times, her parents reprimanded her. Since she had relationship with him, she used to go with him

on bike. He never forced her. However, on the date of the incident, she reached the home late. Hence, under pressure of her parents, she lodged a false report. Referring to school leaving certificate, wherein, her date of birth is 01.06.2004, he argued that on the date of the alleged incident, the victim was above 18 years and not a child. Therefore, provisions of the Protection of Children from Sexual Offences (POCSO) Act, 2012, would not attract. As far as previous crime to his discredit is concerned, it was a case of beating a person by few watchmen and due to the beating the said person died. The said incident has no concern with the present crime. Therefore, that would not be relevant ground to refuse bail. The medical report also does not concretely support the prosecution. There were no internal injuries on her private part. She used to be with the applicant consciously. The investigation has been completed. Hence, the applicant may be granted bail.

4. The learned A.P.P. and the learned counsel for respondent No.2/victim have strongly opposed the application. They would submit that there was a single talk on mobile phone. The applicant took her at a lonely place and did forcible sex with her. The applicant is an accused of murder case. The statement of the victim cannot be discarded at this juncture. She had no reason to lie against the applicant. The medical evidence supports her case. There are two birth certificates. One of them shows that she was below 18 on the date of the incident. Therefore, the POCSO Act

would attract. The offence is serious. The safety of the victim is in danger at the hands of the applicant. Hence, he may not be granted bail.

5. Two birth certificates are available on record; one is school leaving certificate and another is issued by the Registrar of Births and Deaths. However, a leaving certificate shows that she was born on 01.06.2004. As per the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015, the school leaving certificate would prevail over the certificate issued by the Registrar of Births and Deaths. So, *prima facie*, it is doubtful, whether the victim was a child at the time of the alleged incident. Secondly, it appears that since she had some relationship with the applicant, the possibility of her family oppose cannot be denied. The medical evidence is not strongly supporting the allegations of forcible sex. She did not disclose the name of the person in her first statement, who allegedly left her at home. The chargesheet has been filed. The another incident as argued by the learned counsel for the applicant appears to have no concern with the present crime. However, they reside in the nearby localities. Therefore, apprehension of threatening and tampering with the prosecution witnesses raised by the learned counsel for the victim and the learned A.P.P. appears proper. So, the apprehension can be guarded by imposing certain conditions upon the applicant.

6. In the facts and circumstances of the case, the Court is of the view that the applicant deserves bail on certain conditions.

Hence, the order :-

- i) The application is allowed.
- ii) Applicant Akshay @ Rajesh Dnyanba @ Dilip Bansod be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount, in C.R.No.108 of 2022, registered with Bhusawal Taluka Police Station, District Jalgaon, for the offence punishable under Sections 376(1), 354A(1)(i), 354D, 323, 506 of the Indian Penal Code and Sections 4 and 8 of the the Protection of Children from Sexual Offences Act, 2012, on the conditions that,
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall not contact the victim till conclusion of the trial.
 - (c) He shall not enter the Bhusawal town atleast for six months from the date of his release and he shall never enter residential locality of the victim till the conclusion of the trial. However, during the period of six months, he is allowed to enter Bhusawal town for attending the trial only.
- iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad, do pay the fee to the learned counsel appointed for respondent No.2/victim as per the schedule.

**(S. G. MEHARE)
JUDGE**