

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.422 OF 2023

VISHNU BHAGWAN SONALKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Sunil B Surse
APP for Respondent No.1/State : Ms. V. N. Patil Jadhav
Advocate for Respondent No.2 : Ms. Ashlesha V. Kulkarni
(Appointed Through Legal Aid)

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CORAM : S. G. MEHARE, J.

DATE : 13-07-2023

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/victim.
2. The applicant is seeking bail in C.R.No.70 of 2022 registered with Police Station Fardapur, Taluka Soygaon, District Aurangabad, for the offence punishable under Sections 376, 376(2)(f) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
3. The applicant is the father of respondent No.2/victim. She was pregnant from him. The fetus was seized, however, due to technical reasons, paternity could not be decided/tested. She has categorically made the allegations against the applicant how he did forcible sex with her. She is the daughter of the applicant from his first wife who has been died.

4. Surprisingly, the victim appeared in the Court. She never contacted a lawyer appointed through the Secretary, High Court Legal Services Sub-Committee, Aurangabad. Her grandmother i.e. mother of the applicant also appeared with her. In the morning, a statement was made that it was impossible for them to pull on their life, as the applicant is behind bar. Therefore, the learned counsel for respondent No.2/victim was asked to file affidavit. She has filed affidavit. The mother of the applicant was also asked few questions. She would say that the applicant has three children from second wife and two from his first his wife. Due to financial difficulties, she was not able to pull on with the life. If the applicant is granted bail, he would take his family with him and accept the responsibility of victim girl also. She is a nomadic tribe by caste.

5. It appears that the applicant and his family is from the below poverty line. The Government provides free education to girls till 12th Standard. The victim is now in 9th standard. The Government is providing school dresses to the girls under the scheme. There are various Government schemes providing financial support and grains to the people under the poverty line.

6. Considering the schemes which are available for the family of the applicant, there are no reason to believe that it was difficult for them to pull on their life. Since the Court is not satisfied with

the affidavit giving no objection for grant of bail, the affidavit is not considered. Bail application is considered only on merit.

7. The learned A.P.P. has produced the clarificatory report of D.N.A. and pointed out that due to some technical reasons, some time it is not possible to detect the D.N.A. from the fetus. She would argue that the facts remain that the victim stuck up to her statement, and therefore, she cannot be disbelieved. She seems to be under pressure of the family. Hence, she might have sworn in an affidavit. The grandmother is interested to get the applicant released, who is her son. The trial has been commenced. If the applicant is granted bail, he would definitely pressurize the victim. The serious offence has been committed by the father against his daughter. Hence, the applicant does not deserve bail. (The clarificatory report submitted by learned A.P.P. be returned for placing it before the learned Sessions Judge, if the prosecution so desires.)

8. The applicant is the father of the victim. He did forcible sex with the victim and she was pregnant. When she missed menstruation, she went to the hospital and there she was aborted. It is a heinous crime. At this juncture, the applicant cannot be believed. The possibility of driving her out of the house cannot be ruled out, if bail is granted to the applicant. Her statement is natural and there is no contra evidence to disbelieve her at this

junction. Considering the gravity and heinousness of the offence, the Court is not inclined to grant the bail. Hence, the application stands dismissed.

9. The Secretary, High Court Legal Services Sub-Committee, Aurangabad, do 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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