

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

BAIL APPLICATION NO.508 OF 2023

Amitkumar S/o Ashokkumar Bhumihar,
Age-33 years, Occu:Service (Indian Army),
R/o-Gram Dhanpur, Tq-Kashichak,
Dist-Navada (Bihar).

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station,
Bhusawal Bazarpeth, Dist-Jalgaon.

...RESPONDENT

...
Mr. Rajendra N. Chavan Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 30th JUNE, 2023

ORDER :

1. Present Application is the third application of the applicant for bail under Section 439 of the Code of Criminal Procedure. Since the earlier two applications came to be rejected by this Court, present application is also placed. The earlier two orders are available and the material also. The applicant has been arrested in connection with Crime No.803 of 2020 registered

with Bhusawal Bazarpeth Police Station, District-Jalgaon for the offence punishable under Sections 376, 376(2)(n), 506 of the Indian Penal Code and Section 66(E), 67, 67(A) of the Information and Technology Act. His first application i.e. Bail Application No.54 of 2021 came to be rejected by this Court on 4th May 2021 and the second application i.e. Bail Application No.879 of 2022 was rejected on 29th July 2022.

2. It will not be out of place to mention here that the applicant had approached the Hon'ble Supreme Court by filing Petition for Special Leave to Appeal (Cri.) No.10433 of 2022 and by order dated 23rd November 2022 the Hon'ble Supreme Court allowed the petitioner, applicant herein to withdraw the Special Leave Petition with liberty to require the trial Court to proceed with the framing of the charges expeditiously. Further the petitioner was granted liberty to renew his application for bail after framing of charge. Accordingly, it is stated that the applicant has filed application Exhibit-40 before the learned Additional Sessions Judge, Bhusawal and it has been rejected on 16th January 2023.

3. Learned Advocate appearing for the applicant has reiterated the same points which he had argued on the earlier

two occasions and in addition to that it was submitted that in view of the decision in ***Naim Ahamed vs. State (NCT of Delhi), 2023 SCC OnLine SC 89, Satender Kumar Antil vs. Central Bureau of Investigation and another, (2022) 10 SCC 51*** and ***Sanjay Chandra vs. CBI, (2012) 1 SCC 40***, the appellant ought to have been released on bail by the learned trial Judge. This Court in order dated 4th May 2021 observed that the offence under Section 376, 376(2)(n) of the Indian Penal Code has not been made out, still the learned trial Judge has framed the charge for the said offence. There are documents to show that even the prosecutrix has disclosed that she is the wife of the applicant and tried to get the benefit. She suppressed the fact that she had obtained divorce from her husband by filing petition before the Family Court at Jabalpur in Madhya Pradesh. The applicant is an army man. Everything is outcome of the voluntary act on the part of the prosecutrix and now she is giving a different colour. Learned Advocate for the applicant has also submitted that the applicant is suffering from HbsAg and therefore, on this count also he needs to be released on bail.

4. Learned APP strongly objected the application and submitted that there is no change in the circumstance. The

applicant's earlier two applications have been rejected by this Court. He is not entitled to be released on bail.

5. At the outset it is to be noted that the reasons given by this Court while rejecting the earlier applications are definitely considered while dealing with this application also. In order to avoid repetition those are not reiterated. Though the point of delay in lodging the FIR was tried to be raised, it has been observed earlier that knowledge of suppression of fact that the applicant was already married and had two children, was the starting point as per the informant for the knowledge that she has been cheated by suppressing those facts and her consent for physical relations was taken by giving false promise to marry and therefore, the time was taken in cross checking the said fact and then it was observed that there is no delay in lodging the report. Of course, this is the prima facie observation. Secondly, the applicant is pointing out the statements of the witnesses who had stated that the prosecutrix herself had introduced the applicant as her husband. This point has also been dealt with in the earlier applications which need not be addressed once again.

6. It has been stated that though this Court has made some observations regarding non applicability of Section 376 and

376(2)(n) of the Indian Penal Code, yet the charge has been framed. In this connection it will not be appropriate to make any comment on the same as the applicant can challenge the framing of charge or can also make an application for deletion of charge and modification before the same Court by pointing out that those ingredients are not attracted. It is rather presumed that all the stages which have been prescribed for starting sessions trial would have been adhered to in this case. The accused might have been heard as per Section 226 of the Code of Criminal Procedure before framing the charge. It was open for the accused to point out those observations to the learned trial Judge and to demonstrate as to how the ingredients are not attracted. In spite of doing so if the charge is framed, still the applicant is not remediless.

7. Now, relying on ***Naim Ahamed*** and ***Satender Kumar Antil*** (cited supra), it is said that bail ought to have been granted. However, it is to be noted that as on today the position stands is that the charge is framed for Section 376 and 376(2)(n) of the Indian Penal Code also. Under this circumstance, the offence is serious and it has been earlier observed that the applicant being employed in Indian Army, his behaviour should be above board. When allegations are made that in spite of he being married and having two children the said fact was

suppressed from the prosecutrix and then the sexual favours have been taken by giving her promise to marry, which the applicant had knowledge that he will not fulfill, then it is a very serious offence. Note has already been taken as to what is the evidence that has been collected against the applicant in the charge-sheet, therefore it is not reproduced. These are the factors which prevent this Court from granting bail to the applicant. It was also taken note of that the prosecutrix and her family had received threats and even the clips are made viral. There was evidence to that effect. When the life of the prosecutrix and her family members is in danger, then it can be said that present case is not a fit case where the discretion should be granted in favour of the applicant.

8. As regards medical evidence is concerned, a document has been tendered across the Bar, which is a photocopy from Command Hospital Air Force, Bangalore, which is stated to be issued on 16th March 2020. It is stated that the applicant who is 29 years old soldier was detected to have HbsAg positive during blood donation. However, the document says that the systematic examination was within normal limit. The advice given is that the soldier is a case of chronic HBV infection. The First Information Report was registered on 27th August 2020 and the accused was arrested on the same day. Thereafter the accused was got medically examined and it appears that there was no complaint

by the applicant. At that time also the samples were taken and the record shows that note has been taken regarding his HBV positive. Even before the learned trial Judge, it appears that, applicant has relied on the decision in ***Dr. P. Varavara Rao vs. National Investigating Agency and others, 2022 (3) AIR Bom.R (Cri) 677*** and ***Santosh Moreshwar Mehar vs. the State of Maharashtra, 2020(2) AIR Bom.R (Cri) 129*** for his release on medical ground. In fact prayer for release on medical ground would differ in each case depending upon ailment. Here medical condition of the applicant has not gone down and he has not demonstrated anything in support of said ground raised now.

9. As regards the alleged suppression of certain facts by the prosecutrix is concerned, they cannot be gone into and the applicant would be at liberty to make use of those circumstances and documents, if any, while cross-examining the prosecutrix.

10. For the reasons stated, no case is made out for granting discretionary relief in favour of the applicant. No doubt, this Court would therefore be interested in knowing as to how much time trial Court would take for disposing of the matter, in order to protect right of the accused to have a speedy trial and therefore, status report was called from the concerned Judicial

Officer. It has been reported that the accused himself had sought time to proceed in the matter on the ground that he would be filing bail application before this Court. Muddemal property has not been received though directed to be produced and then taking into consideration the number of cases of under trial prisoners, old sessions and special cases as well as time bound cases and the civil cases also, it was stated that about one year's time will be required for disposing of this case. Concerned Judge is having 915 criminal cases and 502 civil cases. But it can be positively taken that every endeavour would be made by the concerned Judge to decide the matter as expeditiously as possible, as even the Hon'ble Supreme Court had directed the concerned Court to frame the charge expeditiously. Therefore, there is no necessity to give any further directions.

11. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]