

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

BAIL APPLICATION NO. 511 OF 2023

Shamkumar S/o Devanand Purbhe

Age : 37 years, Occu : Service at Present in Jail,

R/o. Masrul, Tal. & Dist. Buldhana

...Applicant

VERSUS

1. The State of Maharashtra,
Through the Police Inspector,
Sangamner City Police Station, Sangamner,
Tal. Sangamner, Dist. Ahmednagar.

2. X.Y.Z.

...Respondents

...

Mr. K.N. Shermale, Advocate for the applicant.

Mr. S.B. Narwade, APP for the respondent-State.

Respondent No.2 in person.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : JUNE 05, 2023

PRONOUNCED ON : JUNE 07, 2023

ORDER :-

1. Heard learned counsel for the applicant, learned APP for the State and the complainant in person.

2. The applicant is seeking bail in Crime No.414 of 2022 registered with Sangamner City Police Station, District Ahmednagar for the offence punishable under Section 376(2)(n), 323, and 506 of Indian Penal Code and Section 8 and 12 of Protection of Children From Sexual Offences Act, 2012.

3. The dispute between the applicant and the complainant has a checkered history. In brief, the victim's case was that she and

the applicant got acquainted with each other and then developed relationship. The FIR reveals that the applicant used to go to her home when her husband was alive. Two crimes on the report of the victim were registered against the applicant. First was registered on 19.12.2021 and second was registered on 17.01.2022. In both crimes, he has been granted bail. It has been alleged that after the report of 19.12.2021 the applicant was absconding and threatening her on phone. One day the applicant entered her home. He put a knife on the neck of his daughter. He committed rape with her. However, she did not lodge the report. It has been further alleged that in the month of April 2022 i.e. after registering two crimes against the applicant, he along with three other persons went to her house at Sangamner. The other co-accused said that unless the daughter is raped, she would not take the cases back. However, she intervened and bowed before them. That time, the applicant committed rape in the presence of co-accused. Thereafter, he threatened her and went away. The present report was registered after the victim made complaint to the Maharashtra State Women Commission.

4. Learned counsel for the applicant would submit that after the death of the husband of the victim, she insisted him to marry her. The applicant was already married. She continuously threatened him to marry her and obtain divorce from his wife. The victim used to

lodge false reports against the applicant. She made false allegations that under the promise to marry, the applicant did sex with her. He never cheated her and got Rs.30 lacs from the victim. The report of dishonestly receiving the money was already lodged and the earlier incidents have nothing to do with the present incident. The entire allegations revolve around the money. She has unnecessarily involved her daughter in the crime. It appears that to make the offence serious, she involved her daughter in the crime. The allegations of committing rape in the presence of other co-accused does not inspire confidence. Such allegations are exaggerated. The applicant lost his job as the victim trapped him. The so-called money paid to the applicant was consciously paid by the victim to seek the divorce from his wife. That money was paid to his wife and the divorce has been obtained. But after the divorce, the victim has changed her mind and she started demanding money back which was beyond his capacity. She had also made false allegations against the father of the applicant. The investigation has been completed. The learned Sessions Judge has misconceived the law of change in circumstances and erroneously dismissed the application holding that there are no change in circumstances. He prays to allow the application.

5. The victim in person has vehemently argued that she and her daughters have apprehension of life at the hands of the applicant. Even after lodging the reports against him, he along with his friends

came to Sangamner where she was residing and threatened her to withdraw the cases. The applicant and other co-accused tried to molest her daughter but she could save her. The applicant committed rape in the presence of co-accused. She has referred to the whatsapp messages to prove his presence at Sangamner. She has vehemently argued that she has been systematically cheated. The applicant took formal divorce from his wife with an intention to grab her 30 lacs. She has also referred to various photographs. She prayed to reject the application.

6. Before adverting to the bail application on merit, it would be better to discuss what happened during the hearing of the present application. There was an interaction between the victim and father of the applicant about money which is allegedly being received. The father of the applicant has shown willingness to pay some amount from his own property; however, he did not consult the applicant. Therefore, time was granted to him to consult the applicant whether he was consciously and willingly ready to pay the money to the victim. Thereafter, some dates were given and the matter was posted for statement today. The victim stated today that the applicant has deposited Rs. 5 lacs in the Court. However, learned counsel for the applicant has clarified that the said amount was deposited towards the surety. The overall submission of the learned counsel for the applicant would indicate that the applicant has no money. He has

been dismissed from services; hence, he has no source of income to pay. The applicant has lost his wife and job only due to the acts of the victim. The Court clarified both the parties that it is dealing with the bail application and it has no concern with the recovery and payment of the so-called amount. So both the parties put their stand and argued before the Court. Let us now turn to the bail application of the applicant.

7. Perused the order of Mr. D.R. Deshpande, Additional Sessions Judge, Sangamner below Exhibit-3 in Special Case No.2/2023 dated 06.03.2023. Perusal of the order reveals that he has misconceived the law on the change in circumstances. The learned counsel for the applicant has correctly pointed out that the learned Additional Sessions Judge, Sangamner did not consider the law on change in circumstances appropriately. The applicant's first bail application for anticipatory bail was withdrawn as this Court was not inclined. His second regular bail was filed before charge sheet and lastly his third regular bail application was filed after filing of the charge sheet. The filing of the charge sheet is a change in circumstances but the learned Additional Sessions Judge, Sangamner erroneously held that it was a successive bail application. Be that as it may, the bail application under Section 439 of Cr.P.C. before this Court is not by way of revision against the order refusing bail by the Sessions Court under Section 439 of Cr.P.C.

8. As far as merit of the case is concerned, it is not in dispute that the applicant and the victim got acquainted during the lifetime of the husband of the victim. The complaint of the accused to Human Right Commission dated 21.10.2022 reveal that the applicant met her even prior to his marriage. It has also been alleged that the husband of the victim was older to her and she was not sexually and mentally satisfied with him. Hence, she had developed illicit relations with the applicant. Admittedly, the applicant lost his job and two reports were lodged against him making the allegations of setting her house at Jalna at fire and cheating her financially. She has already taken the action for cheating and setting her house at fire. The last incident on the basis of which the present crime is registered allegedly happened at Sangamner. The alleged incident appears to be happened at 8 'o' clock. She was residing in a thick locality. As per the allegations, she was raped in the presence of co-accused and her daughter was also manhandled. Even if it is presumed that the applicant had been to the house of the victim at Sangamner but considering the allegations and the long history of the dispute, it cannot be accepted at this stage as a gospel truth that the applicant has committed rape with the victim in her house in the presence of co-accused. As discussed above, the whole story revolves around Rs. 30 lacs which was allegedly paid to the applicant by the victim. It appears that the victim has lodged many reports against the applicant.

The checkered history of litigation, allegations and counter allegations needs to be tested before the Court during the trial. So far as the apprehension of life at the hands of the applicant is concerned, that may be guarded by imposing strict conditions. As far as recovery of money is concerned, legal remedy is available to the victim. The charge sheet has been filed and nothing is to be recovered and discovered from the applicant. The trial may take its time to conclude. In view of the facts and circumstances of the case, the Court is of the view that the applicant deserve bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Shamkumar Devanand Purbhe, be released on bail on executing P.B. and S.B. of Rs.50,000/- (Rupees fifty thousand) with one solvent surety in the like amount in connection with the above crime, on the conditions that he shall not tamper with the prosecution witnesses.
- (iii) The applicant shall not contact the victim or any other witnesses in any mode or manner till conclusion of the trial.
- (iv) The applicant shall not enter the place where the victim and her daughter are presently residing.

(v) The applicant shall attend the trial on each and every material date.

(S.G. MEHARE, J.)

Mujaheed//