

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.623 OF 2023

ARJUN MOTIRAM BADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondent No.1 : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Sahebrao M. Pandit
(appointed Through Legal Aid Committee)
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CORAM : S. G. MEHARE, J.

DATE : 28-04-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned APP for respondent No.1/State and the learned counsel for respondent No.2/victim.
2. The applicant is seeking bail in C.R.No.273 of 2022 registered with Police Station Dharur, District Beed, for the offence punishable under Sections 376, 324, 504, 506 read with Section 34 of the Indian Penal Code and Sections 4(2), 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.
3. If anybody read the first information report, he would not believe that the victim and her mother were lying. The specific

allegations in a proper words have been levelled against the applicant by a girl of 12 years old. She alleged that the applicant lifted her, took in his house, tied her hands, gaged cloth in her mouth and did penetrative sexual assault. She also states that when he was committing the penetrative assault, she read the time in a watch. It has been alleged that wife of the applicant came and knocked the gate. The accused opened the gate and then his wife again tied her on a wooden cot and assaulted with a rope. Brilliantly, she narrated the similar incident before the learned Magistrate. The report was lodged on the next day of the incident i.e. on 13th. She was sent to the medical examination two days after the incident.

4. The applicant has come with a case of false implication as he was leading against the character of the mother of victim. The medical examination report of victim falsify the case. There were no injuries on her private part. There were no injury marks on her body due to the alleged assault with a cotton wire. She had been tutored. Therefore, the delay has also been explained in the first information report. It was a bare quarrel between the wife of the applicant and the victim. That's why, the mother, in the first information report stated that she learnt that the wife of the applicant assaulted the victim, hence, she returned to home from the factory, where she was working.

5. The learned counsel for respondent No.2/the victim has vehemently opposed the application. He would submit that victim was 12 years old at the time of the incident. The applicant committed heinous crime against a child. Hence, bail may not be granted. Similar were the arguments of the learned A.P.P.

6. Normally in a case of sexual assault with a girl below 13 years, bail is not granted provided there should be *prima facie* material to believe the allegations. The facts of this case are altogether different. The applicant who is 48 years old has been allegedly committed penetrative sexual assault with a child of 12 years, but such serious allegations are not supported with the medical evidence. If the applicant had sexually assaulted the victim, she would have serious injuries on her person particularly on her private part. However, there were no injuries on her private part except rupturing hymen. Such rupture does not inspire the confidence that it was due to penetrative sexual assault. Since there is no medical evidence which was the best possible evidence in this case, it raises a doubt about the allegations. There were no signs of tying. These circumstances also raises a doubt about allegations. It appears that there was a quarrel between the victim and the wife of the applicant. The so-called two eyewitnesses who were relative of the complainant also did not support her. In these peculiar facts, though *prima facie* allegation

appears to be serious but not supported with the medical evidence, the applicant deserves bail. Hence, the order:-

- i) Bail Application is allowed.
- ii) Applicant Arjun Motiram Bade be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount, in the aforesaid crime, on the conditions that,
 - (a) He shall attend the trial on each and every effective date.
 - (b) He shall not contact the victim and her mother till conclusion of the trial.
- iii) 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.
- iv) Needless to state that the observations are restricted to this bail application.

(S. G. MEHARE)
JUDGE

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