

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.679 OF 2023

GUFRAN @ GUFFA NISAR PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Shaikh Mazhar A. Jahagirdar
APP for Respondent No.1/State : Ms. V. N. Patil Jadhav
Advocate for Respondent No.2 : Mr. Mahesh K. Bhosale

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CORAM : S. G. MEHARE, J.
DATE : 28-06-2023

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.I-733 of 2022 registered with Shrirampur City Police Station, Shrirampur, Taluka Shrirampur, District Ahmednagar, for the offences punishable under Sections 376(2)(n)(I) and Section 376-D of the Indian Penal Code.
3. The first informant/victim is physically challenged. She was residing with his son. She was sexually assaulted. It has been alleged that she could not resist the accused since she was physically challenged. The co-accused called the applicant. He came to the house of the victim and told her that she allowed the other co-accused to have sex and let him have sex with her. He also did forcible sex with her. The first information report reveals

that all the accused committed rape with the victim one after another. It has also been alleged that the present applicant did forcible sex with the victim twice.

4. The learned counsel for the applicant would submit that there is an inordinate delay of about one year to lodge the report. The applicant has been falsely implicated in the crime. She did not state about the applicant in her statement under Section 164 of the Code of Criminal Procedure. Her son changed the entire story of the prosecution case. The informant was hand in gloves with the police. The allegations levelled against the applicant were improbable. The applicant had a dispute with the son of the first informant. Therefore, he has been falsely implicated in the crime. The applicant is 23 year old boy. If he is kept behind bars, his future may be spoiled.

5. The learned A.P.P. and the learned counsel for respondent No.2/victim have strongly opposed the application. They would argue that the delay in lodging the report may be explained during the trial. The gravity of the offence is material. The victim was physically challenged and shelterless, and nobody was in the family to support her. The main accused is a habitual offender, having 19 crimes to his discredit. The applicant has also been tried for a similar offence against his wife. The victim has apprehension at the hands of the accused. She has no reason to lie. The record reveals the involvement of the applicant in the crime. It is a case

of gang rape having severe punishment. Hence, he may not be granted bail.

6. Perused the chargesheet.

7. It is not in dispute that the victim is physically challenged. The specific allegations have been levelled against the accused/applicant that he did forcible sex with the victim. She was a helpless lady. The discrepancy in the statements under Sections 161 and 164 of the Code of Criminal Procedure does not absolve the applicant from the serious crime. She has no reason to lie. The applicant was in the company of hardened criminals. The applicant, along with the co-accused, had sexually exploited the victim. The apprehension of the threat to the life of the victim and her child appears reasonable. The offence is serious. The applicant has a bad past. His acquittal in other crimes would not wash his intention. In view of the facts and circumstances of the case, the applicant does not deserve bail. Hence, the bail application stands dismissed.

8. The Secretary, High Court Legal Services Sub-Committee, Aurangabad, is requested to pay the fee to the learned counsel appointed for respondent No.2/victim as per the schedule.

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

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