

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

BAIL APPLICATION NO. 1179 OF 2023

**SHRIKANT ASHOK JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER.**

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Advocate for applicant : Mr. Nilesh S. Ghanekar,
APP for respondent No.1 : Mr. S.B. Narwade
Advocate for respondent No.2 : Mr. R.S. Pawar.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 4th SEPTEMBER, 2023

ORDER :-

1. The applicant seeks bail in connection with Crime No. 174 of 2022 registered with Police Station, Kannad (Rural) for the offences punishable under Sections 376, 376(D), 354, 354(A), 354(D), 452, 506 r/w. 34 of IPC and Sections 4,8, 12 of the Protection of children from Sexual Offences Act, 2012, so also Sections 3(1)(w)(ii), 3(ii)(va) of the Scheduled Castes and Scheduled Tribes, (Prevention of Atrocities) Act.

2. The investigation was set in motion on the basis of the information given by respondent No.2. It is alleged that the victim is approximately aged about 17 years and resides with her parents at village Kheda, Taluka Kannad. She was pursuing education at village Chapner from 8th to 10th Standard. While she used to walk to attend the school, the accused Kiran, Arun, Shrikant (present applicant) used to

stalk her. It is further alleged that accused Arun and Shrikant had outraged her modesty in the month of May 2021. Accused Govind, Shahurao Sanket, Kiran, Arun, Shrikant, used to visit house of the informant when the victim was alone and say that they have love with her and used to outrage her modesty. It is alleged that accused Govind had forcibly committed sexual intercourse with her. After few days, the accused Kiran took her to the house of his uncle and committed sexual intercourse. Lateron, while she was working in the field, accused Shrikant (present applicant) and Arun had sexual intercourse with her in sugarcane crop and threatened to kill her. Similarly, on 12th August, 2023, the applicant had sex with her. It is alleged that when there was quarrel between the brother of the victim with one of the accused, he uttered that they are maintaining sexual relations with the victim. On inquiry with the victim, she has disclosed the aforesaid facts. Resultantly, information was given to the police culminating into the FIR. The applicant and other accused have been arrested in pursuance of the registration of offences. The applicant is behind bars since 14.8.2022. The prayer of the applicant for grant of bail has been rejected by the learned Sessions Judge vide order dated 13.4.2023.

3. Mr. Ghanekar, the learned advocate appearing for the applicant would submit that there is a delay in lodging the FIR. False allegations are made against the applicant. The medical evidence do not suggest commission of rape. Except statement of the informant, no incriminating evidence could be collected during the investigation. The applicant is behind bars for more than one year. He would further submit that the victim is a school going girl and had a reasonable understanding. Any offending sexual act would have been disclosed by

her. He would further submit that upon initial inquiry with the victim, she has not levelled any allegation against the applicant regarding forcible sex with her.

4. Mr. Ghanekar, the learned advocate for applicant would further submit that Bail Application No. 999 of 2023 filed by one of the accused – Govind Shelke has been favourably considered by this Court and he is released on bail vide order dated 4.7.2023. Relying upon observations in the said order, Mr. Ghanekar, learned advocate appearing for the applicant submit even on the ground of parity, the applicant deserves to be enlarged on bail.

5. Mr. Narwade, learned APP, so also Mr. R.S. Pawar, learned advocate for respondent No.2, vehemently oppose the prayers. They would submit that the victim was minor. It is a case of gang rape. Further, apart from the offences under the Penal Code, Sections 4,8, and 12 of the POCSO Act, and relevant sections of the SC and ST (Prevention of Atrocities) Act are invoked against the applicant. They would submit that although one of the accused is enlarged on bail, his role is not comparable with the role attributed against the applicant. Therefore, they urged to reject the plea for grant of bail.

6. Having considered the submissions advanced, it is apparent that there are allegations against the applicant that would attract penalty under the IPC as well as POCSO Act. However, the investigation is complete. Charge sheet is filed. The applicant is behind bars for more than one year. The trial would take its own course. Pertinently, this Court enlarged accused Govind on bail. It would be appropriate to refer

certain observations recorded by this court while granting bail to accused Govind, which read thus :-

“Perused the charge sheet. There appears material on record that immediately after quarrel between one of the co-accused and brother of the victim, the victim was enquired about so called sexual relationship, when she was working in the field. However, she states nothing about the present applicant. Her father also did not state that the applicant did forceful sex with with her. The cumulative effect of the statements of the other relevant witnesses reveals that the victim did not complaint immediately when her parents and brothers made enquiry about the allegations. The medical report is not supported the prosecution. The investigation has been completed. There are no antecedents to the discredit of the applicant. His further detention would serve no purpose. Hence, the order.”

7. There is reason to accede with the aforesaid observations made by this Court. Pertinently, perusal of the statement of witness Sunita Dnyaneshwar Jadhav and Dnyaneshwar Kisan Jadhav would suggest that the victim was inquired in their presence about the alleged acts. She did not disclose any such incident. Thereafter, she was taken to police station and FIR has been lodged. Secondly, the role, which is attributed against the present applicant and accused Govind is same, except one additional incident against the applicant. However, that would not make any difference when the case of the applicant is considered for applying the principle of parity. In that view of the matter, a case is made out for grant of bail subject to certain conditions. Hence, the following order :-

: O R D E R :

- (I) The application is allowed.
- (ii) Applicant – Shrikant Ashok Jadhav be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in aforementioned crime registered with aforementioned police station on the following conditions :-
- (a) He shall not tamper with the prosecution witnesses.
- (b) He shall not contact the victim or her relatives in any mode or manner till conclusion of the trial.
- (c) He shall attend the trial on each and every effective date.
- (d) He shall stay away from village Kheda Post Chapaner, Taluka Kannad, District Aurangabad for two months from the date of his release.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-