

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

16 BAIL APPLICATION NO.1187 OF 2023

RIZWANA @ RIJJO NIYAMAT PATHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. G.J Karne
APP for Respondent : Mr. K S Patil
Advocate for Respondent 2 : Mr. N. R. Shaikh (appointed
Through Legal Aid)

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 28, 2023

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PER COURT :-

1. The applicant is seeking regular bail in connection with FIR No.16 of 2023 dated 19.1.2023 registered with Ashti Police Station, Taluka Partur, District Jalna for the offences punishable under sections 363, 366-A, 370, 376-D, 376(2)(n), 504, 506 r/w 34 of Indian Penal Code, u/s 4,6,16,17 of POCSO Act.

2. Investigation was set in motion on the basis of the information given by respondent no.2. She alleged that she is aged about 18 years and 5 months. She states that she is residing at the address mentioned in the FIR. She married about four years ago and she has a daughter aged three years. She is residing separate from her husband. It is further alleged that on 26.5.2022 present applicant took her out of the house where the accused no.3 arrived on motorcycle and applicant alongwith accused no.3 Ganesh carried her on the motorcycle.

aaa/-

Thereafter, they halted near a field, where accused no.2 committed forcible sexual intercourse with aid of other accused person. She alleges that subsequently, she conceived pregnancy owing to forcible sexual intercourse by the accused no.2. Based on the aforesaid information, crime no.16 of 2023 dated 19.1.2023 is registered with police station Ashti, District Jalna. Prayer of the applicant for grant of bail has been rejected by the Court of Sessions. Hence the present application.

3. Learned advocate appearing for the applicant would submit that apparently the informant is married and she states her age to be 18 years 5 months at the time of the recording of the information. He would submit that there is no evidence by which the age of the informant can be determined. It will have to be presumed that she was more than 18 years at the time of the incident. He would submit that although alleged incident took place on 26.5.2022, FIR is lodged after 7 months. There is no explanation for the same. He would submit that role of the applicant is limited and the allegations constituting the offences are against accused no.2. There are no criminal antecedents. The applicant be released on bail.

4. Mr. Shaikh, learned advocate appearing for the complainant vehemently opposes the application. He submits that going by the averments in the complaint, the informant is below 18 years. The role is attributed against the applicant and she has played the key role in commission of the offence.

aaa/-

Without her aid offence could not have taken place. He would invite attention of this Court to the provisions of section 13 of the POCSO Act. He submits that the contents of the complaint will have to be presumed to be correct.

5. Learned A.P P. opposes the prayer for grant of bail. He would submit that during the course of the investigation, the school extract has been collected which shows that at the time of the incident, the informant was minor. He would submit that the applicant has played major role in commission of the offence.

6. Having considered the submissions advanced, apparently the alleged incident took place on 26.5.2022 and thereafter consistently, the informant had maintained sexual relations with the main accused. The allegations against the applicant are regarding the incident dated 26.5.2022. However, there is inordinate delay of 7 months in lodging the complaint. Investigation in the matter is complete. Charge-sheet is filed. Further detention of the applicant may not be necessary. She is behind bars since 21.1.2023. No criminal antecedents are brought on record. In that view of the matter, no purpose would serve with further detention of the applicant. Hence, case is made out for grant of regular bail. Hence, the order.

O R D E R

I. Criminal Bail Application is hereby allowed.

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II. The applicant RIZWANA @ RIJJO NIYAMAT PATHAN be released on bail in connection with Crime No.16 of 2023 dated 19.1.2023 registered with Ashti Police Station, Taluka Partur, District Jalna for the offences punishable under sections 363, 366-A, 370, 376-D, 376(2)(n), 504, 506 r/w 34 of Indian Penal Code, under section 4,6,16,17 of the POCSO Act on furnishing P. B. of Rs.50,000/- (Rs. Fifty Thousand) with one surety of the like amount on the following conditions :-

- a] The applicant shall not tamper with the prosecution evidence in any manner or shall not make any attempt to contact any witness named in the charge-sheet.
- b] The applicant shall attend the trial.
- c] Mr. Shaikh, learned advocate appearing for respondent no.2 was appointed through legal aid. His remuneration is quantified to Rs.10,000/- (Rs. Ten Thousand) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

III. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR J.)

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