

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1325 OF 2023**

Babar S/o Mohamed @ Ahmed Sayed,
Age 28 years, Occu. Labor,
R/o. Peth Darvaja, Udgir, Tq. Udgir,
Dist. Latur

..Applicant

Versus

1. The State of Maharashtra
Through Investigating Officer/Police Inspector,
Police Station Udgir (City),
Tq. Udgir, Dist. Latur.

2. XYZ

..Respondents

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D. A. Bide, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for Respondent-State.
Mr. Swapnil Joshi, Advocate for the Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATE : 25th AUGUST, 2023.**

ORDER:-

1. The applicant seeks regular bail in Crime No.127 of 2023 registered with Udgir (City) Police Station, Tq. Udgir, Dist. Latur for the offences punishable under Sections 395, 363, 365, 341, 354, 504, 506 of the Indian Penal Code and under Section 8, 12 of the POCSO Act.

2. The investigation was set in motion vide FIR in Crime No.127/2023 registered on the basis of the complaint given by one Vedant Patil, who is a student. It is informed that on 12.04.2023 informant alongwith his friends had been to the cinema theater for watching movie, however, show was canceled. Informant with his two friends were returning in auto rickshaw, at that time unknown persons followed them on motorcycle and halted auto rickshaw. One of them entered into the auto rickshaw and diverted rickshaw towards Kalpana

Theater. It is alleged that the victim girl, who was their classmate was wearing Burkha, so as to hide her identity.

3. The accused persons abused them in vulgar language and assaulted the informant and other friends. It is further alleged that the applicant accused forcefully took away cash of Rs.750/- from pocket of the informant. Other accused persons outraged modesty of the victim girl. On the basis of the aforesaid complaint, Crime No.127/2023 was registered with Udgir (City) Police Station. The accused persons were arrested in pursuance of the registration of offence. Investigation is completed and charge-sheet is filed. Pertinently, except applicant all the accused persons have been enlarged on bail under orders passed by the Sessions Court. The prayer of the applicant has been rejected observing that he is main culprit and leader of a Gang. Further there are criminal antecedents against him.

4. Mr. Bide, learned Advocate appearing for the applicant would submit that the presence of the applicant itself is doubtful at the time of the incident. He would submit that material in charge-sheet do not disclose the presence of the applicant at the time of commission of offence. Relying upon the Roznama in a pending criminal case with Judicial Magistrate First Class, Udgir, he submits that the applicant was attending the said proceeding at the relevant time. He would further submit that since victim girl accompanied with informant was wearing Burkha, under misconception the incident took place. There was no other intention of committing offence levelled in charge sheet. He would further submit that the investigation in the matter is completed. The charge-sheet is filed. The accused persons who are attributed with similar role as that of the applicant are already enlarged on bail. On the ground of parity, the applicant is entitle for similar treatment.

5. Per contra, learned APP as well as Ms. Joshi, learned Advocate appearing for the victim vehemently oppose the prayers in the Bail Application. They contend that the serious offence has been committed by the applicant. He is master mind and a gang leader. He has criminal antecedents. By inviting attention of this Court to statements of the auto rickshaw driver Ajim Raheman Mulla, it is pointed out that the applicant was present alongwith other accused persons at the time of commission of offence. The auto rickshaw driver personally identifies all the accused persons. The learned APP further invites attention of this Court to the recovery of the incriminating articles like belt used for assault during commission of offence and submits that there is sufficient evidence to point out involvement of the applicant. The learned APP has further invited attention of this Court to 164 statement of the victim and pointed out serious nature of offence committed by the accused persons.

6. Having considered the submissions advanced, it is apparent that the FIR contains the allegations against the applicant and other accused persons. They followed auto rickshaw in which the informant, his friends and victim girl were traveling. The accused persons halted that rickshaw and forcefully diverted it to the spot of incident and assaulted informant and other friends, who were following on the Scooty. The victim girl, who was wearing Burkha / Scarf was made to remove it act attracting penalty under section 354 of IPC and POCSO Act was committed against her. However, on close scrutiny of material in charge sheet, it appears that no specific role is attributed against applicant. Allegations against him are general and vague. He is projected as gang leader, but object behind incident appears to deter informant and victim girl wearing Burkha. Definitely manner in which accused carried them-

selves in serious and attract rigors of penal law which can be determined in trial.

7. The investigation in the matter is over. The charge-sheet is filed. Further detention of the applicant would not be necessary for any purpose. It is true that, there are many offences registered against the applicant under various provisions of Indian Penal Code, but that itself would not be sufficient to continue his detention behind the bar till conclusion of the trial in the present case. The other accused are already enlarged on bail under orders of the Sessions Court. The material which is made part and parcel of the charge-sheet do not show that the applicant is attributed any different role than other accused persons enlarged on bail. He is denied bail only because of criminal antecedents. However, when common role is attributed against the applicant and other accused, who are already enlarged on bail, there is no reason to deny parity to the applicant. However, his enlargement on bail will have to be guarded by the stringent conditions. Hence, the following order: -

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Babar S/o Mohammed @ Ahmed Sayed be released on bail in Crime No.127 of 2023 registered with Udgir (City) Police Station, Tq. Udgir, Dist. Latur for the offences punishable under Sections 395, 363, 365, 341, 354, 504, 506 of the Indian Penal Code and under Section 8, 12 of the POCSO Act on executing P.B. of Rs.50,000/- (Rs.- Fifty Thousand only) each on following condition:
 - a. The applicant/accused shall not directly and indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer;

b. The applicant/accused shall not tamper with the prosecution evidence and shall not pressurize the prosecution witness in any manner.

c. The applicant/accused shall furnish his detailed permanent as well as present address with address proof like house tax receipt, electricity bill, revenue record and all mobile numbers before the Court and shall intimate any change therein in future to the court;

d. The applicant/accused shall not leave State of Maharashtra without prior permission trial Court till conclusion of trial.

e. He shall not act in a manner prejudicial to the interest of the prosecution.

f. He shall not abscond and shall not prolong the trial on any point.

g. He shall not commit similar other offence in future and shall maintain law and order forever. He shall not leave State of Maharashtra without prior permission of this Court till conclusion of the trial.

h. Breach of any condition in any manner would entail rejection of bail.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE