

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 BAIL APPLICATION NO.1331 OF 2023

SHAIKH ARBAZ SHAIKH YUNUS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for the Respondent – State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Rajendra Chavan (appointed
Through Legal Aid)
...

CORAM : S. G. CHAPALGAONAKAR,J.

DATE : 25.08.2023

PER COURT :-

1. By this application, the applicant is seeking regular bail in connection with Crime No.160 of 2023 dated 19.04.2023 registered with Pathri Police Station, District Parbhani for the offences punishable under sections 376, 354A, 354D, 324, 323, 506, 34 of I.P.C.
2. The accused/applicant is facing prosecution on the basis of First Information Report dated 19.04.2023 recorded by respondent No.2. In nutshell, the allegations in the FIR are that the applicant Shaikh Arbaz Shaikh Yunus was stalking the informant and blink the eyes whenever she goes out of home and used to touch her with bad

intention. It is further alleged that on 14.04.2023 that about 2.30 p.m. while informant along with her younger sister had been to answer the call of nature, the applicant/accused along with three others came to the spot of the incident and forced them to remove clothes on their persons and attempted to commit rape of informant. However, the younger sister escaped.

3. On the basis of the aforesaid information, the F.I.R. was registered for the aforesaid offences, the applicant was immediately arrested. Except applicant, other accused persons are released on bail, however, prayer of the applicant is rejected by the Sessions Court. Hence, this application.

4. Mr. Sudarshan Salunke, learned Advocate appearing for the applicant, would submits that although the incident is dated 14.04.2023, the FIR is lodged on 19.04.2023. The delay of 4 days is unexplained. He would further submits that allegations in the F.I.R., would not constitute the case of rape. At the most, it is the case of outraging the modesty punishable under Section 354A of the IPC. He would further submit that there is variance on material particulars in

the statement of the informant and her sister recorded under Section 164 of the Code of Criminal Procedure.

5. Mr. Salunke, learned Advocate for the applicant also invited attention of this Court to the some orders passed by Courts which indicates that the family of the informant and the applicant are having enmity terms. He would submit that it is the case of false implication.

6. Mr. S. P. Deshmukh, learned APP as well as Mr. Rajendra Chavan, learned Advocate appearing for the informant vehemently opposes the prayer for grant of bail. Inviting attention of this Court to the injury certificate and medical record, it is contended that there are mark of injuries on the person of the informant so also her sister. It is contended that the disputes between families projected on behalf of the applicant ended long back before 10 years and would have no relevance while considering the prayer for grant of bail. He would further submit that allegations in the F.I.R coupled with the recovery of incriminating articles particularly the clothes from the applicant/accused is sufficient to show his involvement in crime.

7. Learned Advocate appearing for the informant would submit that the offences punishable under POCSO attracts in present case since the second victim is merely 13 years of age. The heinous crime is committed by the applicant. The applicant may hamper the trial. Since the applicant and the victim are residing in same locality, the possibility of tampering the evidence and witnesses cannot be ruled out.

8. Having considered the submissions advanced and apparently there are allegations against the applicant. However, the investigation is completed. Charge-sheet is filed. Applicant is behind bars for more than four months. Other accused persons are already enlarged on bail. As rightly pointed out by learned Advocate Mr. Salunke appearing for the applicant, there is delay of five days in lodging the F.I.R. The plausible explanation is not coming forward. Although Section 376 is charged against the applicant, the contention in F.I.R. as well as statement under Section 164 of the Cr.P.C., falls short to make out the case of the rape. The variance in the statements of victim recorded under Section 164 and the contents of the F.I.R. creates doubt regarding truthfulness. There are previous disputes in the family of the informant and the applicant. The possibility of false

implication cannot be ruled out. The trial would take its own course. The interest of the prosecution can be protected by imposing certain conditions. As such, the case is made out for grant of bail. Hence the order :

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant - Shaikh Arbaz Shaikh Yunus be released on bail in Crime No.160 of 2023 registered with Pathri Police Station, District Parbhani for the offences punishable under sections 376, 354A, 354D, 324, 323, 506, 34 of I.P.C. subject to furnishing of P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) with one surety of the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence in any manner. He shall not enter Pathri till conclusion of trial except for attending court proceeding.
- (iv) The applicant shall attend the trial on each and every effective date of hearing.
- (v) The applicant shall not indulge in any criminal activities.
- (vi) Bail application is accordingly disposed off.
- (vii) It is made clear that the observations made herein above are restricted to the present bail application.

(viii) Fees of the learned Advocate Mr. Chavan appointed to defend Respondent No.2 is quantified as Rs.10,000/ (Rupees Ten thousand), which would be payable by the High Court Legal Services Sub-Committee, Aurangabad.

(S. G. CHAPALGAONKAR)
JUDGE

shp/-