

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

902 BAIL APPLICATION NO.1461 OF 2023

WALMIK ASARAM JAYBHAYE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S. B. Joshi, Mr. M. D. Swami i/b
J. P. legal Associates.
APP for Respondent/s-State : Mr. S. P. Tiwari.
Advocate for Respondent No.2 : Mr. Narwade Patil Ravindra B.
(Appointed through Legal Aid).
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CORAM : S. G. MEHARE, J.
DATE : 10.10.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel appointed for the victim/respondent No.2.
2. This is a successive bail application of the applicant for bail in Crime No.42 of 2023, registered at Phulambri Police Station, District Aurangabad, for the offences punishable under Sections 363, 376(2)(N), 376(3), 109 of the IPC and Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act.

3. The change-in-circumstance is that due to paralysis the applicant become unable to pursue his regular pursuits. He requires the assistant for his daily natural activities.

4. Learned counsel for the applicant referred to the letter of Superintendent of Jail, dated 17.07.2023 addressed to the learned Additional Sessions Judge, Aurangabad along with the medical papers and the observations recorded by the treating Doctor at Government Medical College and Hospital, Aurangabad. On the basis of these documents, the temporary bail was granted to him. Subsequently, some medical certificates have been produced. The document of Asha Kendre, Badnapur supports the contentions of the applicant. However, two other certificates of fitness does not disclose that the applicant was treated for paralysis.

5. Learned counsel appointed for the victim/respondent No.2 has vehemently opposed the bail application. He argued that the Doctors issuing the false medical certificates of fitness shall be prosecuted and the bail cannot be granted as those certificates show that the applicant was fit to resume his duty. He would also submit that there is nothing on record to show that the applicant is suffering from such a disease that he cannot pursue his routine life. He would submit that the

offence is serious. The victim was 9th standard girl. The applicant took the disadvantage of having the driver of the school bus and committed the serious offence.

6. Learned APP for the respondent-State would submit that considering the gravity of the offence, it would not be appropriate to grant the bail.

7. The bail has been sought on the sole ground of his physical inability to perform his natural acts due to paralysis. The contention of the applicant is supported with the letters of the Superintendent, Central Prison, Aurangabad and the Medical Examination Report and the opinion advised of the treating Doctor from the Government Medical College, Aurangabad. Reading this material, there is no reason to doubt that the applicant's condition is not good and he requires the assistant for his natural acts. The medical certificate showing that he is fit to resume is appears a printed proforma. The medical certificate of dated 03.10.2023 is regarding the complaints of suffering from backache and fever. The said Doctor had treated him only for the complaints of the accused. Considering these documents with the papers of the Government Medical College, the physical condition of the applicant would not change.

8. The applicant has a good case for bail as he is suffering from paralysis and requires continuous assistance. His mother has already submitted affidavit before the learned Sessions Court, that she would take his care. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The order dated 15.09.2023 is confirmed.
- (iii) Applicant **WALMIK ASARAM JAYBHAYE** has already furnished P.B. and S.B. before the Court on the conditions that he will not avoid the attendance of the trial without any substantial reason or ground.
- (iv) Condition Nos.1 and 3 of order dated 15.09.2023 shall continue.
- (v) The Secretary, High Court Legal Services, Sub-Committee, Aurangabad do pay the legal fees to the appointed advocate appearing for respondent No.2/victim as per the schedule.

(S. G. MEHARE, J.)

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