

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

BAIL APPLICATION NO.1529 OF 2023

NITIN GOPINATH DUKALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Rajendra H. Wagh, Advocate for the Applicant.

Mr. K. S. Patil, APP for Respondents-State.

Mr. Shaikh Ashraf Patil and Mr. M. P. Patel, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 06th SEPTEMBER, 2023.

PER COURT:-

1. By this application, the applicant seeks regular bail in connection with Crime No.160/2023 registered with Pachod Police Station, Dist. Aurangabad for the offences punishable under Section 376 (2)(f), 376(2)(j), 376(2)(n), 504, 506 of the Indian Penal Code and Section 4 and 6 of the Protection of Child From Sexual Offences Act, 2012 and Section 67 and 67 (A) & (B) of the Information and Technology Act.

2. The investigation was set in motion on the basis of the basis of information of victim herself. She states that the applicant is husband of her maternal aunt. The victim had visited his place in the year 2019. At that time, the applicant had secretly video-graphed victim while she was taking bath. It is alleged that on 28.01.2022, when victim visited the place of her maternal aunt on occasion of her daughter's birthday, the

applicant shown her video and forcibly established physical relationship. It is further alleged that because of threat of making video viral, she did not disclose incident to any one. She further alleges that when she was working in the private bank, the applicant opened his account and used to frequently call her on mobile phone. Once he took her in his car and in the midway again established forcible sexual relationship. Based on aforesaid information, crime has been registered and the applicant is arrested on 08.05.2023 and since then he is behind the bar. The investigation is complete and charge-sheet is filed. The applicant moved his application for grant of bail before the Special Court, however his application came to be rejected.

3. The learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated. He invites attention of this Court to the Non-cognizable Cases (N.Cs.) registered on 18.04.2023 and 27.02.2023 at the instance of one Vitthal Rambhau Jadhav and mother of the victim. He submits that there was dispute regarding monetary transactions and therefore, the applicant has been falsely implicated.

4. The learned APP would vehemently oppose the application. He would submit that as per allegation in FIR when the applicant established forcible relationship with the victim she was minor. The provisions of POCSO Act are invoked. He would further submit that the family relation between the victim and the applicant cannot be ignored. He is husband of the maternal aunt and taking advantage of victim's minority heinous act have been committed.

5. The learned Advocate appearing for the complainant, however, submits that before the Sessions Court the victim has filed pursis that she has no objection if the applicant is released on bail by putting certain conditions. He would further submit that even before this Court the similar affidavit is filed by the victim and she has recorded her no objection to release applicant on bail by putting certain condition.

6. Having considered the submissions advanced, apparently the story given in the FIR begins from the year 2019, whereas FIR is lodged in the year 2023. Pertinently, victim says that under the threat of objectionable video recorded by the applicant, a physical relationship was developed by the applicant with her. However, no such video is made part of charge-sheet. A perusal of the photographs of applicant with victim, which are made part of the charge-sheet, depicts consensual relationship between the victim and the applicant, that was not under force. In that view of the matter, genesis of the prosecution case does not appear to be genuine.

7. It is made clear that, observations made hereinabove are for *prima facie* consideration and only for disposal of this application. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Nitin Gopinath Dukale be released on bail in Crime No.160/2023 registered with Pachod Police Station, Dist. Aurangabad for the offences punishable under Section 376 (2)(f), 376(2)(j), 376(2)(n), 504, 506 of the Indian Penal Code and Section 4 and 6 of the Protection of Child From Sexual Offences Act, 2012

and Section 67 and 67 (A) & (B) of the Information and Technology Act on executing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

- a. The applicant shall not enter village Pimpri Raja till disposal of trial.
 - b. The applicant shall not tamper with the prosecution evidence in any manner.
 - c. The applicant shall not establish contact with victim or any of the witnesses named in the charge-sheet.
 - d. The applicant shall attend the proceedings before the Sessions Court on each and every effective date.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE