

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

927 BAIL APPLICATION NO.1647 OF 2023

GANESH VAKHARYA KALE
`VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Manoj Uttamrao Shelke
APP for Respondents: Mrs. P.V. Diggikar.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 25th OCTOBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 111 of 2023 registered with Bhoom Police Station, Dist. Osmanabad for the offences punishable under Section 376 of IPC and Sections 4,6,8 and 12 of the Protection of Children from Sexual Offences Act, 2012.
2. The investigation was set in motion on the basis of the information given by the victim herself, who is aged about 16 years and 4 months. She states that her parents had been to Jarandeshwar Sugar Factory at Satara for harvesting sugarcane. She was residing at village Pathrud alongwith her brother. She was pursuing her education in 10th Standard. She was acquainted with the applicant (accused).
3. On 17.3.2022, while the informant was at home, the applicant entered in the house, dragged her to kitchen and established physical intercourse. It is further alleged that on 24.3.2022, again, the

applicant/accused repeated the incident and committed rape. The victim informed the aforesaid facts to her mother on telephone. The mother and brother of the victim arrived at Pathrud. However, because of some urgent call, they were required to report back to the factory. After end of the harvesting season, the complaint is lodged. On the basis of the aforesaid information, Crime No. 111 of 2023 came to be registered. The applicant has been arrested on 2.5.2023. Since then he is behind bars. The applicant's prayer for grant of bail has been rejected by the Sessions Judge, vide order dated 11th August, 2023.

4. The learned counsel for the applicant would submit that there is a delay of 57 days in lodging the FIR. A concocted story is brought on record on account of dispute regarding financial transaction between the applicant and the mother of the victim. The investigation in the matter is complete. Charge sheet is filed. Hence he urges to release the applicant on bail.

5. Learned APP, however, strongly opposes the prayer. She would point out that the victim is barely 16 years of age. The applicant is aged about 29 years. There is no possibility of love affair between them. The victim was twice thrashed into kitchen and physically exploited. The delay is explained in the FIR itself. Hence, she urges to reject the prayer for grant of bail.

6. Perusal of FIR would show that the victim has narrated two incidences when she was subjected to rape by the applicant. The first incident is dated 17.3.2022 and second is dated 24.3.2022. As per the FIR, the victim had informed her mother. In response to such

information, the mother of the victim alongwith her brother had been to the village. However, they were required to report back because of some urgent call from the sugar factory and after end of the harvesting season, she reported to the police in the month of May 2023.

Prima facie, the narration in the FIR appears to be a fractured version. The statement of mother of the informant gives some different complexion. The explanation for delay sought to be given by making some accusation against the police station officer. Pertinently, in such a serious case, the natural conduct of the mother of victim would have been different. Although medical papers suggest that there was penetration, it was recorded as per the information given by the victim. Since there is a delay in lodging the FIR and the medical examination of victim took place after 2 months, there is no possibility of finding out any injury corresponding to the sexual assault. The medical evidence is not of much assistance to the case of the prosecution. However, in backdrop of factual material surfaced on record, there is room to accept defence version.

7. In that view of the matter, further detention of the applicant need not be continued. Hence, a case is made out for grant of bail, however, subject to certain conditions. Hence, the order :-

O R D E R

- (i) The application is allowed.
- (ii) Applicant – Ganesh S/o. Vakharya Kale be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) with one

solvent surety of the like amount, in connection with Crime No. 111 of 2023 registered with Bhoom Police Station, Dist. Osmanabad for the offences punishable under Section 376 of IPC and Sections 4,6,8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on the following conditions :-

- [a] The applicant shall not tamper with the prosecution evidence.
- [b] The applicant shall not enter village Pathrud, Dist. Osmanabad.
- [c] The applicant shall not establish any contact with the victim or her family members.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-