

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

928 BAIL APPLICATION NO.1663 OF 2023

SHAIKH ABDUL SHAIKH NAJIR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Shaikh Sohail Subhedar
APP for Respondents : Mrs P.V. Diggikar
Advocate for Respondents : Mr. Nirmal Ravindra Jagdevrao
(appointed Through Legal Aid)

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: October 19, 2023

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.233 of 2023 registered with Chikalthana police station, District Aurangabad for the offences punishable under sections 376(2)(n), 376(B), 354, 354-A, 323, 504, 506 of the Indian Penal Code and u/s 8 of Protection of Children From Sexual Offences Act, 2012.

2. Investigation was set in motion on the basis of the information given by the victim alleging that on 25.9.2020 she married with the applicant as per Muslim custom. It was a love affair. However, subsequently, she came to know that the applicant is already married and he has two daughters and a son out of earlier marriage. She alleges that on 17.4.2021 she divorced with the applicant as per Muslim customs, however, she was pregnant at that time and delivered a daughter out of said wedlock. She alleges that although she has divorced from

the applicant, the applicant forced her for sexual favour under threats. She states about the incident dated 8.6.2023 and 13.6.2023 in that line. She alleges that on 13.6.2023 when the applicant was exerting pressure for sexual favour, her minor sister intervened. However, the applicant outraged her modesty. On the basis of such report, crime no.233 of 2023 is registered against the applicant. The applicant has been arrested on 14.6.2023. Investigation is complete. Since then the applicant is behind bar.

3. Mr. Sohail Subhedar, the learned advocate appearing for the applicant submits that the applicant has been falsely implicated in the aforesaid crime. In fact, there is dispute between the applicant and informant regarding meeting with the daughter. The informant opposes the applicant to meet with his daughter and, therefore, fictitious story is pressed into service by way of the FIR. He would invite attention of this Court to the statement of sister of the informant recorded under sections 161 as well as 164 of the Cr.P.C. He would point out that there is material contradictions as regards to outraging of modesty of the minor sisters of the informant. He would further point out that initially offence under POCSO Act were not invoked against applicant. Subsequently, such addition is made. He would therefore submit that in view of the completion of investigation, further detention of the applicant is not necessary. Hence, he be enlarged on bail.

4. Learned A.P.P. as well as learned advocate appearing for the informant strongly opposes the prayer for grant of bail. They would submit that allegations in the FIR are supported by four eye witnesses, who are the family members of the victim. Apart from that, there are two independent witnesses, who have deposed about misbehavior on the part of the applicant. They would point out that there is recovery of torne clothes, which supports the allegations regarding the incident dated 13.6.2023. Apprehension is raised that possibility of recurrence of similar incident cannot be ruled out. As such, it is urged that the applicant is not entitled for the bail.

5. Having considered the submissions advanced, it can be gathered that the informant alleges that inspite of divorce with the applicant on 17.4.2021, he continues to ask sexual favour from the informant. However, the complaint has been lodged on 14.6.2023. If, inspite of divorce, the applicant was keeping sexual relations, the informant could have lodged the report earlier. There is no explanation for such delay in lodging the complaint. Further allegations of outraging modesty of the minor sister of the informant are subsequently introduced. On prima facie consideration of the statement of minor sister recorded under sections 161 and 164 of the Cr.P.C., there is material inconsistency as regards to the incident and nature of the sexual assault. Considering the aforesaid circumstances and the submissions advanced on behalf of the applicant, possibility of false implication cannot

be ruled out. Investigation is complete, charge-sheet is filed. The material witnesses are family members of the informant. In that view of the matter, further detention of the applicant is not necessary. The case is made out for grant of bail. Hence, the order.

O R D E R

- i. Bail Application is hereby allowed.
- ii. The applicant - SHAIKH ABDUL SHAIKH NAJIR be released on bail in connection with Crime No.233 of 2023 registered with Chikalthana police station, District Aurangabad for the offences punishable under sections 376(2)(n), 376(B), 354, 354-A, 323, 504, 506 of the Indian Penal Code and u/s 8 of Protection of Children From Sexual Offences Act, 2012 on his furnishing P.B. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall not contact with any witness named in the charge-sheet.
 - c] The applicant shall not enter jurisdiction of Aurangabad Taluka except for attending the dates of the trial before the Special Court.
 - d] The applicant shall not indulge into similar offence.
- iii. Bail application is accordingly disposed off.

- iv. Learned advocate representing the respondent no.2/victim is appointed through Legal Aid, his remuneration shall be paid as per the rules.

(S.G. CHAPALGAONKAR J.)

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