

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1672 OF 2023

Ganesh Shrirang Shembde

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Kadam Vishant Prabhakarrao, ,

Advocate for Respondent/State : Mr. Sandesh V. Hange

Advocate for Respondent No.2 : Mr. Shaikh Ashraf Patel

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CORAM : S.G. MEHARE, J.

DATED : DECEMBER 13, 2023

PER COURT:-

1. The applicant/accused is claiming bail in Crime No.109 of 2022 registered with Police Station Jintur for the offence punishable under Sections 377 and 506 of the Indian Penal Code and Section 4 of the Protection of Children From Sexual Offences Act.

2. While hearing the case, it was transpired that the victim boy was medically examined at Rural Hospital, Jintur. The medical examination report was placed before the Court. The report reveal that Medical Officer examining the victim did not express the provisional medical opinion nor reserved his opinion till receiving the reports from chemical analysis. Since it was an apparent infirmity affecting the rights of the parties i.e. the victim as well as the accused, a show cause notice to the concerned Medical Officer was issued and asked him to explain. He appeared in the Court. He explained that it

was his first time to examine the sexually assaulted child and fill up the medico legal examination report of sexual violence. He is a M.B.B.S. and serving since last more than ten years. His explanation is not satisfactory. His way of reply shows that he was not serious and does such important duty casually. He was asking for apology. Apology is not the solution. A serious infirmity has been committed whereby the victim, who is mentally retarded has to suffer for his carelessness. Even it seems not negligent. It is carelessness and casual approach. Hence, this Court is of the view that the apology would not be the answer to correct him. For such a serious infirmity causing loss to the persons concerned, the Court is of the view that the Director of Health Services should be directed to hold the departmental enquiry of Dr. Gajanan Sopanrao Kale, Medical Officer, Rural Hospital Jintur.

3. Accordingly, the Director of Health Services is directed to hold the departmental enquiry of Dr. Gajanan Sopanrao Kale and submit the report to this Court within six months from the date of receipt of this order.

4. For the purpose of enquiry, Registrar (Judicial) is directed to supply the copy of Medico legal examination report of sexual violence produced with this application.

5. Learned counsel for the applicant vehemently argued that the Medical Officer did not express his opinion. There were no signs

of sexual assault. The medical examination report was not available when the earlier bail application was considered. On the basis of his statement, the bail application is considered as there was a change in circumstance.

6. The vehement arguments of the learned counsel for the applicant was that there were no physical signs of assault and no opinion as regards the sexual assault was expressed by the Medical Officer. In the absence of any such physical signs, the applicant cannot be held accused for the serious offence. Hence, he prayed for bail.

7. Learned APP and learned counsel for the victim have argued that the victim is a mental retarded boy and he had liner injury to his anus. His relatives saw the accused and the victim coming out from bushes. They have immediately noticed the physical condition of the victim. Victim's statement was recorded by the expert teacher. He stated that the accused committed sexual assault with him.

8. Since the circumstantial evidence was against him, the Court expressed disinclination to grant bail.

9. Learned counsel for the applicant sought time to take the instructions. Hence, the matter was kept back. The matter was again called; however, he did not returned till 05.35 pm. Hence, it is presumed that he had no instructions to withdraw the application.

10. In view of the above observations, considering the gravity of the offence and mental condition of the victim, the bail application stands dismissed.

(S.G. MEHARE, J.)