

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

8 BAIL APPLICATION NO.1718 OF 2023

JAMIR DADAMIYA QURESHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. S.S. Gangakhedkar h/f.
Mr. Ramrao G. Nirmal.

APP for Respondents: Mr. S.B. Narwade.
Advocate for Respondent No.2 : Ms. Shilpa Awchar

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 1st NOVEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in crime No. 227 of 2023, registered at Sailu Police Station, Dist. Parbhani, for the offense punishable under Sections 376, 376(2)(n), 354-D, 506 of IPC and Sections 4,6,8,12,16, 17 of POCSO Act, 2012.

2. The investigation was set in motion on the basis of information given by the victim herself. In nutshell, it is alleged that the applicant and victim reside in same locality. The applicant/accused was stalking her while she was going to the college. He was pursuing her to have communication. It is alleged that about 3 to 4 months prior to the lodging of FIR, the accused/applicant took the victim to a lonely place and had sexual intercourse with her and threatened her not to disclose it to anyone. She alleges that the applicant had snapped her photographs and gave threats to defame her through social-media. It is further alleged that on 22.6.2023, again, the victim was forced by the accused to

accompany him, they went together at a lodge where applicant had forcible intercourse with her. On the basis of aforesaid narration incident, crime No. 227 of 2023 came to be registered against the applicant. The investigation progressed. On conclusion of investigation, charge sheet is filed against the applicant for aforesaid offences. .

3. Mr. Gangakhedkar, learned counsel holding for Mr. Nirmal Advocate for the applicant would submit that the victim and applicant are residents of same locality and know each other since their childhood. The victim voluntarily accompanied the applicant and incidents of sexual intercourse alleged are consensual in nature. He would invite attention of this court to the statement of the witnesses, particularly, the employees at the lodge where the last incident had occurred to contend that because of the intervention of the outsiders, the meeting of the informant and applicant in a hotel was exposed. Thereafter, the present FIR is lodged. He would therefore submit that this is a fit case for grant of bail.

4. Learned APP as well as the learned advocate appearing for the victim vehemently oppose the prayer for grant of bail. They would contend that the narration given in the FIR is consistent with the statements of the victim under Section 161 and 164 of Cr.P.C. The learned APP invited attention of this court to the history narrated at the time of medical examination, where, the victim has categorically stated that she was forced for sexual intercourse. He would further invite attention of this court to the injuries noticed on the private part of the victim. He therefore urges to reject the prayer for grant of bail.

5. Having considered the submission advanced, it can be

gathered from the narration in the FIR as well as statements of victim recorded under Section 164 of Cr.P.C. that the first incident of sexual abuse is alleged to have taken place 4 months prior to lodging of the FIR, wherein, the victim alleges that in the afternoon, she was forced by applicant to accompany him. Then she was taken in a hut near Dudhna Dam where accused/applicant forcibly established sexual intercourse with her. Pertinently, no complaint in respect of this incident is made. The second incident is dated 22.6.2023 when victim voluntarily accompanied with the applicant to the lodge, where, a room was hired. Although, she alleges forcible intercourse at that place, the statement of the witnesses from the lodge shows that the applicant and victim were seen together leaving hotel room. Some outsiders objected for making false entries of names in the Hotel register, suspecting it to be case of Love-Jihad, which exposed their relationship.

6. Taking into account of the aforesaid circumstances, possibility of love affair between the applicant and victim cannot be ruled out at this stage. However, it would be subject matter of trial. In the circumstances as stated above, a case for grant of bail is made out, however, subject to certain conditions.

7.

: O R D E R :

[i] The application is allowed.

[ii] The applicant Jamir S/o. Dadamiya Qureshi, be released on bail on his furnishing P.R. Bond in the sum of Rs. 50,000/- (rupees fifty thousand only) with one solvent surety in the like amount, in crime No. 227 of 2023, registered at Sailu Police Station, Dist. Parbhani, for the

offence punishable under Sections 376, 376(2)(n), 354-D, 506 of IPC and Sections 4,6,8,12,16, 17 of POCSO Act, on the following conditions;

- [a] The applicant shall not tamper with the prosecution evidence.
- [b] The applicant shall not enter the Sailu Taluka till conclusion of trial.
- [c] The applicant shall not make any attempt to establish contact with the victim or any other witness named in the charge sheet.
- [d] The applicant shall not indulge in any criminal activity.
- [e] The applicant shall attend each and every effect date of trial before the trial court.
- [f] It is made clear that the observations made hereinabove are prima facie in nature and made only for the purpose of deciding the bail application.
- [g] Since Ms. Shilpa Awchar Advocate is appointed through Legal Aid Committee, her remuneration be paid as per Rules.
- [h] The applicant stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-