

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

932 BAIL APPLICATION NO.1883 OF 2022

AKSHAY SHIVLING MATHE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Ashish P. Deshmukh h/f
Mr. Shaikh Majit S.
APP for Respondent-State : Mr. S. B. Narwade.
Advocate for Respondent No.2 to assist APP : Mr. A. D.
Gadekar - Appointed.
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CORAM : S. G. MEHARE, J.
DATE : 04.01.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the victim/respondent No.2.

2. The allegations have been levelled against the applicant that the victim went to find whether anybody is there on the public bore well. That time, the applicant came there, hold her hands and forcibly took her into a house, which was unused. He took her into that house, switched off the light and did forceful sex with her. Thereafter, she left the spot of the incident. The alleged incident happened on 29.07.2022. However, the report was lodged on 03.08.2022. The victim

has explained that she was frightened, hence, she did not disclosed the incident to anyone. However, her brother learnt about the incident from some other boy. Then, she told the incident to her brother and father. The prosecution has a witness, who stated that on the day of the incident, he saw the victim going inside the house, where the alleged incident happened. However, he did not state that he saw the accused with the victim. The spot panchnama reveals that the house where the alleged incident happened was of concrete and one laptop was also lying in one of the room. It is not in dispute that the owner of the said house does not reside in the said house. He resides at Aurangabad.

3. Learned counsel for the victim has stated that the said room of the said house was given for use to one person to run a *Setu Suvidha Kendra*. However, there is no evidence of said person and the landlord that the said house was given for use to a third person. That apart, the victim herself while narrating the facts to the Medical Officer stated that the house where the alleged incident happened, nobody was living there. The alleged incident happened at 8.00 p.m. If that house was unused, it must be locked. No one would keep the house open. If it is presumed that somebody was using that house. The user

of that house has no reason to keep the house open that anybody may enter the house. Keeping the house unlocked is an invitation to the thieves to commit the crime. The spot panchnama also does not disclose how that house was opened and who was living in the said house. It seems that the material investigation as regards to the possibility of entering in the said house is missing. The victim is admittedly 14 years old. However, the circumstances appears suspicious, particularly the spot of the incident. The Trial Court may examine how it was possible to enter in the locked home, during the trial. In the light of these facts and the suspicious circumstances though the offence is serious and victim was 14 years old, it would be inappropriate to keep the applicant behind bar. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **AKSHAY SHIVLING MATHE** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.301 of 2022, registered by Police Station Karmad, District Aurangabad, for the offences punishable under

Sections 376(3) of the IPC, Section 4 of POCSO Act and Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) of S.C. and S.T. (Prevention of Atrocities) Act, on the following conditions :

- (a) The applicant shall not contact the victim or any other witnesses till the conclusion of the trial in any other way or mode.
- (b) The applicant shall not enter the village, if he regularly resides there for about three months from the date of his release.
- (iii) The Secretary, High Court Legal Services, Sub-Committee, Aurangabad to pay the legal fees to appointed advocate for the victim/respondent No.2 for as per the schedule.

(S. G. MEHARE, J.)

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vmk/-