

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

8 BAIL APPLICATION NO.1724 OF 2023

LAKHAN JAGAN PAWAR
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Satej S Jadhav
APP for Respondents: Mrs. P.J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 1st DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 251 of 2023 dated 25th June, 2023 registered with police station Parola, District Jalgaon for the offences punishable under sections 376, 354, 506 of IPC.

2. The investigation was set in motion on the basis of complaint given by the victim who is aged about 35 years. She alleges that on 25.6.2023, she had been to village Pimpalkotha alongwith her husband and family members. The accused was acquainted with her family. Her husband filled petrol in his motorcycle and the applicant travelled as a pillion rider alongwith the applicant/accused. She alleges that while in return journey from Pimpalkotha after attending the programme, the accused took the motorcycle in forest area and dragged her and then raped her. Although she tried to resist, she could not escape. Thereafter, she again took ride on the motorcycle with the accused and came to home where her family members were waiting for her. Immediately, she

narrated the incident to them and even to other villagers who were present. Thereafter, complaint came to be lodged. The prosecutrix was referred for medical examination. Report of medical examination is collected during the investigation. On completion of investigation, charge sheet has been filed. The applicant/accused came to be arrested on 3.7.2023. Since then he is behind bars. His prayer for grant of bail has been rejected by the Sessions Court vide order dated 11th September, 2023. Hence, the present application.

3. Mr. Satej Jadhav, learned advocate for the applicant would submit that the prosecutrix is aged about 35 years. She alleges that she was dragged by the accused in the forest area in the midst of journey on motorcycle and then thrashed her. He then committed forcible sexual intercourse with her, although she tried to resist the same. He would submit that in such a situation, some marks of physical violence could have been noted during the medical examination. The possibility of consensual physical relation cannot be ruled out. He would submit that since the investigation is complete and charge sheet is filed, further detention of the applicant would not be necessary.

4. The learned APP strongly oppose the prayer for grant of bail. She would point out that FIR is immediately lodged. The incident took place in the forest area where the victim was helpless to resist or could not get any help. The specific allegations are incorporated in the FIR. Absence of physical injury itself is not sufficient to discredit the contents of the FIR.

5. Having considered the submissions advanced, it is apparent

that the prosecutrix accompanies the applicant on the motorcycle. Since morning they were in the company of each other. After end of the programme at village Pimpalkotha, in return journey also prosecutrix travelled alongwith the applicant on his motorcycle. If her further narration that in the midst of return journey, the applicant took her in the forest area, dragged her and then committed forcible sexual intercourse with her, is taken into consideration, in natural course, some physical marks or resistance could have been disclosed in the medical examination. Apparently, such marks are absent. Possibility, as urged on behalf of the applicant, that there was consensual sex cannot be completely ruled out at this stage. However, it would be subject matter of trial.

6. Considering the material on record, further detention of the applicant would not be necessary. Hence, a case is made out for grant of bail.

7. **ORDER**

- (i) The Bail application is allowed.
- (ii) Applicant – Lakhan s/o. Jagan Pawar, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in connection with Crime No. 251 of 2023 registered with Police Station Parola, Dist. Jalgaon, for the offences punishable under Sections 376, 354, 506 of IPC on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence.

[b] He shall not establish any contact with the prosecutrix or any other witness named in the charge sheet.

[c] He shall attend each and every effective date before the trial court.

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[d] He shall not enter Bole Tanda till conclusion of trial.

[iii] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-