

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

BAIL APPLICATION NO.1737 OF 2023

RAMKISHAN RAKHAMAJI MAGAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Balasaheb N. Magar, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th OCTOBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.235/2023 registered with Parbhani Rural Police Station, District Parbhani for the offences punishable under Sections 376(2)(n), 323, 504, 506 of the Indian Penal Code.

2. The informant lodged report dated 28.08.2023 alleging that she lost her husband in the year 2010 leaving behind two children with her. It is alleged that the applicant who is relative visited her and assured of taking her care. Because of his assurance, affinity developed between them. It is further alleged that on 25.08.2022 at about 11.00 pm the applicant arrived at her home and raped her. She alleges that when she resisted, he assured that he will continue to take care for her and children and intend to marry her. With this assurance, he continued sexual relationship with her. The informant further alleges that the applicant took some obscene photographs and videos and threatened of making those viral. Under such threats he continued physical relationship with her. She further alleges that

the applicant purchased plots out of consideration amount received by her after sell of land. With the aforesaid allegations, she lodged report lodged which is culminated into Crime No.235/2023.

3. Mr. Magar, learned Advocate appearing for the applicant would submit that the first incident of alleged rape took place on 25.08.2022. No complaint in respect of such incident was lodged. The informant continued physical relationship with the applicant without any resistance. She stayed at Nashik with him in rented flat. They had relationship as husband and wife. However, when dispute arose on account of purchase of property, the present FIR is lodged. He would submit that the relationship was consensual in nature. The allegation regarding making obscene video clips and photographs viral are baseless. Hence, he urges to release the applicant on bail.

4. The learned APP strongly opposes the prayer. He would submit that there are serious allegations. The informant is widow and helpless lady. The applicant took benefit of her helplessness and also extracted money for his own benefit. The investigation is in progress. Hence, he urges to reject the bail.

5. Having considered submissions advanced, what is apparent is that the allegation of rape has its inception in the incident dated 25.08.2023. Thereafter, informant continued her physical relationship with the applicant. The contents of the FIR shows that she resided with him at Nashik in rented flat, where she maintained continuous physical relationship with the applicant. The narration in the FIR would clearly demonstrates that the informant was living with the applicant in live-in-relationship. Apparently, some dispute arose when two plots were

purchased. One of them was in the name of the informant and one in the name of the applicant. The informant alleges that money received by her after sell of the agricultural land was used for purchase of the plots by the applicant. Taking overall survey of the allegation in the FIR, *prima facie* it is difficult to hold that the offence under Section 376 of the Indian Penal Code would attract against the applicant. The applicant is arrested on 31.08.2023. The mobile phones are recovered, but nothing incriminating could be gathered from the memory of the mobile phones. Hence, the case is made out for grant of bail. It is made clear that, the aforesaid observations are based on *prima facie* consideration of the record only for the purpose of disposal of this application and shall not be used while considering the bail plea of any other accused. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Ramkishan Rakhamaji Magar be released on bail in Crime No.235/2023 registered with Parbhani Rural Police Station, District Parbhani for the offences punishable under Sections 376(2)(n), 323, 504, 506 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall not establish contact with the informant or any other person acquainted with the facts of the case.
 - c. The applicant shall visit the concerned Police Station once in a week i.e. every Saturday between 10.00 am to 02.00 pm.

d. The applicant shall not enter village Bhramhangaon, District Parbhani till filing of the charge-sheet.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2023