

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

931 BAIL APPLICATION NO.1861 OF 2023

TUKARAM BANSI KHIRE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S.V. Suryawanshi
APP for Respondent no.1 : Mr. S.B. Narwade
Advocate for Respondent 2 : Mr. N.R. Shaikh Nasimoddin
(appointed Though Legal Aid)

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CORAM : S. G. CHAPALGAONKAR, J.
Dated : November 03, 2023

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.270 of 2023 registered with Sonpeth police station, Tq. Sonpeth, District Parbhani for the offences punishable under sections 354 of the Indian Penal Code, u/s 12 of the Protection of Children from Sexual Offences Act, 2012 and u/s 3(1)(w)(i) & 3(1)(w)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Investigation is set in motion on the basis of the information given by mother of the victim. In nutshell, it is alleged that on 4.10.2023 daughter of the informant had been to bank of Godavari River. The accused was also present on the boundary of his land, which is adjacent to the river. At about 12.30 hours when the informant went back to her home, her daughter informed that accused sexually molested her. The informant rushed to the house of accused and told the

incident to his family members. After return of her husband in the evening at about 8 pm incident was narrated to him. Few other persons were also called and after having discussion, a complaint has been lodged on next day. On the basis of the aforesaid information, crime no.270 of 2023 dated 5.10.2023 came to be registered with Sonpeth Police Station, District Parbhani.

3. Learned advocate appearing for the applicant would submit that the applicant is aged about 82 years. There is delay of 12 hours in lodging the FIR. He would submit that FIR is lodged after consultation to many persons which shows that it is for obvious reasons.

4. Learned A.P.P. as well as learned advocate appearing for the informant vehemently opposes the prayer for grant of bail. They would submit that victim is merely 8 years of age. She has been sexually molested. Although age of the applicant/accused is 82 years, in view of the presumption u/s 30 of the POCSO Act, mental status or sexual intent has to be presumed.

5. Having considered the submissions advanced, apparently, there is a delay of about 12 hours in lodging the FIR that has been lodged after consultation with many persons. The applicant is aged about 82 years. Investigation papers shows that although the incident took place in day light at a public place on the bank of river, there is no independent corroboration to the allegations in the FIR. The, statement of

victim is recorded under section 164 of Cr.P.C. shows further improvement in the version appearing in the FIR. The possibility of tutoring cannot be ruled out. The maximum punishment prescribed for the alleged offence is up to 5 years. Investigation is practically over. In that view of the matter, further detention of the applicant would not be necessary. Hence, case is made out for grant of bail. Hence, the order.

O R D E R

- i. Bail Application is hereby allowed.
- ii. The applicant - TUKARAM BANSI KHIRE be released on bail in connection with Crime No.270 of 2023 registered with Sonpeth police station, Tq. Sonpeth, District Parbhani for the offences punishable under sections 354 of the Indian Penal Code, u/s 12 of the Protection of Children from Sexual Offences Act, 2012 and u/s 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on his furnishing P.B. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend the concerned police station once in a week i.e. on every Monday between 10 am to 2 pm till filing of the charge sheet.

- c] The applicant shall stay away from the village Shirsi (Budruk), Tq. Sonpeth, District Parbhani, till filing of the charge-sheet.
- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE.

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