

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

BAIL APPLICATION NO.1884 OF 2023

Sayyad Asef Sayyad Dilawar

....Applicant

Versus

The State Of Maharashtra

...Respondent

Mr. M.S. Bhosale, Advocate for the applicant.

Mrs. P.V. Diggikar, APP for respondent-State.

Mr. Sohail Subhedar Shaikh, Advocate for informant.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 27th OCTOBER, 2023

PER COURT:

1. The applicant seeks regular bail in connection with Crime No. 222 of 2023 registered with Peth Beed police station, Beed for the offences punishable under sections 376-D, 506 read with 34 of the Indian Penal Code.

2. The investigation was set in motion on the basis of complaint given by the prosecutrix. She alleged that she married on 20.10.2018. Prior to her marriage, she had love affair with the applicant-accused. In the month of January-2023, accused arrived at her home and pressurize her for having sex with him. Under such pressure, she was subjected to the rape. It is further alleged that on 24.04.2023, when she had been to her maternal home, applicant along with his companion Shahabaz had been there and forcibly took her in their car. Thereafter at an isolated

place in ghat section of village Pali, they had forcible sexual intercourse which is video-graphed. She further alleges that the accused Shahabaz snatched her neckless and ear rings. She further alleged that on 26.04.2023, accused-Shahabaz made her on mobile call under the pretext that he will return her neckless. Then he took her in a car. They proceeded to Pali where a room was hired in a hotel. Accused-Shahabaz again subjected her to rape. She states that due to pressure exerted by accused she could not disclose the incident to anyone. Thereafter, because of consistent blackmailing and threats from the accused persons, she disclosed the incident to her husband and then lodged the report. The applicant is arrested on the basis of aforesaid crime.

3. Mr. Mahesh Bhosale, the learned advocate appearing for the applicant submits that the applicant has been falsely implicated. The alleged incident is of April-2023, however, the FIR has been lodged on 06.09.2023 as such there is unexplained delay of five months. He would submit that so far as the present applicant is concerned the informant admitted that she had love affair with the applicant. In the month of January-2023, she had sexual intercourse with applicant. However, no complaint was lodged in this regard. He would therefore submits that on the face of it story of the prosecutrix is unreliable. There are no criminal antecedents to discredit the applicant. Hence, he seeks enlargement of the applicant on bail.

4. The learned APP so also the learned advocate appearing for the prosecutrix strongly opposes the prayer for grant of bail.

5. The learned APP invites attention of this Court to the statement of hotel staff where the informant was taken by the accused and she was subjected to the rape. She also points out the copy of guest register wherein names of co-accused and informant along with their signatures are appearing, which corresponds to the dates of offence mentioned in the FIR. She would further invite attention of this Court to the statement of victim recorded under section 164 of Cr.P.C. wherein the she is consistent with the narration given in the FIR. She would therefore urged that prima facie there is sufficient material to show involvement of the applicant in the commission of offence.

6. Learned advocate appearing for the victim adopts the arguments advanced by learned APP and further submits that although there is abduction of the victim, necessary offences are not invoked. The investigation is in progress. Seriousness of the offence would be more crystallized as investigation progresses. Hence, he opposed prayer for grant of bail.

7. Having considered the submissions advanced, apparently the victim is a married women and resides along with her husband since 2018. In the FIR she admits that she had love affair with the applicant and they were having regular conversation through mobile phone. Further she alleges that in January-2023, applicant had been to her house and had sexual intercourse with her. Pertinently, this incident is not reported by the victim either to her family members or police. In this background, possibility of consensual sexual relations cannot be ruled out. The other set of allegations are in respect of the

incident dated 24.04.2023 and 26.04.2023. Material on record in the form of statement of employees of the hotel supports the version of the informant as regards to accused No. 2. However, except belated statement of the applicant there is nothing on record to show complicity of the applicant in the incident dated 24.04.2023 and 26.04.2023. In that view of the matter, further detention of the applicant is not necessary. The case is made out for grant of bail. Hence, the order.

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant – Sayyad Asef Sayyad Dilawar be released on bail in connection with Crime No. 222 of 2023 registered with Peth Beed police station, Beed for the offences punishable under sections 376-D, 506 read with 34 of the Indian Penal Code 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] After filing of charge sheet, the applicant shall attend each and every effective date of hearing before the Sessions Court.
 - c] The applicant shall not indulge into similar offence.
 - d] The applicant shall attend the concerned police station once in a week on every Monday in between 10.00 am to 2.00 pm, till filing of

charge sheet.

e] The applicant shall not establish contact with the prosecutrix or any other witness who is acquainted with the facts of the present case.

iii. Bail application is accordingly disposed off.

[S. G. CHAPALGAONKAR, J.]