



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

934 BAIL APPLICATION NO. 2116 OF 2023

NITIN BABARAO YELANE

....Applicant

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondent

...

Advocate for Applicant : Mr. S.G. Kawade

APP for Respondent/State : Mr.S.A.Gaikwad

Advocate for Respondent No. 2 : Mr. Ajinkya Reddy (Appointed
through the Legal Aid)

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 21.12.2023.

PER COURT :

1. The applicant seeks regular bail in connection with Crime No.220 of 2023 registered with police station Bhokar, District Nanded for the offences punishable under sections 376(2), 376(3), 376-D-A, 506 of the Indian Penal Code and Sections 4, 8 and 17 of the Protection of Children from Sexual Offences Act.

2. Investigation was set in motion on the basis of the information given by victim herself. It is alleged that on

18.06.2023 while she was working in field accused Satish came from backside and thrashed her under the threat of dagger. He sexually molested her, removed her clothes and raped her. Although she attempted to make hue and cry, she was made to keep mum under the threat of dagger. The companion of accused Satish i.e. applicant and another were keeping watch while accused Satish raped her. Thereafter, mother of victim arrived in the field. While she reached at victim, accused person fled away from spot. Based on such information FIR has been lodged on 19.06.2023 at about 20.29 hours. The applicant has been arrested in pursuance of aforesaid crime on 14.07.2023 and since then he is behind bar.

3. Mr. Shrikant G. Kawade learned advocate appearing for the applicant would submit that there is inordinate delay in lodging FIR. Although incident is stated to have occurred on 18.06.2023, FIR is lodged on 19.06.2023 at about 20.29 hours. As such, there is inordinate delay of 32 hours in lodging the FIR. He would invite attention of this court to remark dated 19.06.2023 when victim was medically examined, it shows that victim refused to subject herself for medical examination. He

would further point out that applicant has been falsely implicated. Even no specific role has been attributed against him that would invite penalty U/Sections 376(2), 376(3), 376-D-A, 506 or under Section 4, 8, 17 of Protection of Children from Sexual Offence Act, 2012.

4. Learned A.P.P. as well as learned Advocate appearing for victim strongly opposed the prayer for grant of bail. They would submit that victim has specifically mentioned role of applicant along with main accused. He was present on the spot of incident. By referring to provisions of Section 376 (D) learned council for victim would urge that although accused No.01 is attributed role of actual rape, common intention of other accused persons can be gathered from the circumstances. Therefore, the applicant is equally guilty of offence under Section 376(D) of IPC.

5. Having considered the submissions advanced and material placed before this court, it can be observed that in pursuance of FIR dated 19.06.2023 applicant has been arrested on 14.07.2023. Investigation progressed and charge-sheet is filed. Perusal of the FIR would show that alleged incident took

place at about 12 hours on 18.06.2023. However, FIR has been registered in late hours of 19.06.2023. Explanation of delay prima facie does not appeal. Apparently, there are allegation of committing rape under the threat of dagger. However victim refused to undergo her medical examination. Even otherwise if limited role attributed against applicant is considered, he is not attributed with role of sexual assault. Although his presence is marked along with main accused, his role is not spelled out. Whether, applicant can be booked U/Sec. 376 (D) of Indian Penal Code would be matter of trial. In view of aforesaid circumstances, further detention of applicant is not necessary. Hence, case is made out for grant of bail. Hence, the order.

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant – Nitin S/o Babarao Yelane be released on bail in connection with be released in connection with Crime No. 220 of 2023 registered with Bhokar Police Station, Dist. Nanded for the offences punishable under Sections 376(2), 376(3), 376-D-A, 506 of the Indian Penal Code and Sections 4, 8 and 17 of the Protection of Children from Sexual Offences Act 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 not enter village Dorli, Tq. Bhokar, Dist. Nanded till conclusion of trial.
 - c] The applicant shall attend each and every effective date before the trial court.
- iii. Since Mr. Ajinky Reddy appointed to represent R. No. 02 – victim through Legal Services Authority, his remuneration shall be paid in accordance with law.
- iv. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

mahajansb/