



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (BA) NO.517 OF 2023**  
(Santlal s/o Jayram Kothari Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

Mr. A.C. Jaltare, Advocate for the applicant.  
Ms Dhote, APP for the State.  
Ms C.S. Bute, Advocate (appointed) for non-applicant No.2.

**CORAM:- URMILA JOSHI-PHALKE, J.**  
**DATED :- DECEMBER 18, 2023.**

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.435/2022, registered with Police Station Aheri, District Gadchiroli for the offence punishable under Sections 376 of the Indian Penal Code.

3. The applicant is arrested on 02/10/2022. Since then he is behind bar.

4. Learned Counsel for the applicant submitted that on an allegation of the victim that on 26<sup>th</sup> September 2022 at about 1:00 p.m. the victim was standing at Kallem fata along with one of her friend and was waiting to board a bus to Etapalli, at the relevant time, a truck proceeding towards Etapalli came near to them and stopped. The driver of the present applicant took the victim in the said truck and subsequently subjected her for sexual assault. As per the allegation, the present applicant had caused

injury by biting on her cheek and also assaulted her and subjected her for sexual assault and thereafter dropped her. On the basis of said report, police have registered the crime.

5. Learned Counsel for the applicant submitted that as far as the allegation that she was assaulted and had a bite by the present applicant, it is not supported by the medical report as no injuries are found either on her person or on her cheek. She has not narrated the description of the present applicant nor given the truck number. Merely on suspicion the present applicant is arrested. She has identified the present applicant on the say of police. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required and hence, he be released on bail.

6. Said application is strongly opposed by the State on the ground that there is a *prima facie* material against the present applicant who took the victim in the truck and subjected her for sexual assault. There was no prior acquaintance between them, therefore, there is no reason for her to implicate falsely in the alleged offence. During medical examination, the hymen was found to be old healed and tear present. If the applicant is released on bail, he will not be available for trial and prays for rejection of the application.

7. Having heard learned Counsel for the parties. Perused the investigation papers. As far as the allegation is

concerned she alleged that she was not only subjected for sexual assault but the applicant has outraged her modesty by assaulting her and biting her on her cheeks. She is medically examined. During her medical examination, no injuries either found on her cheek or on other parts of the body. As far as sexual assault is concerned, old hymen tear was found by the Medical Officer during her examination.

8. Admittedly, the investigation is completed. Chemical Analyzer reports are yet to be received. The applicant is behind bar since 02/10/2022 i.e. more than one year and two months. The trial is yet to be started as Chemical Analyzer reports are not filed. Considering the nature of the allegation and the investigation is completed, further incarceration of the present applicant is not required as no purpose will be served by keeping the present applicant behind bar.

9. Considering the apprehension raised by the learned Additional Public Prosecutor and the learned Counsel for the victim, the application deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Santlal s/o Jayram Kothari in connection with Crime No.435/2022, registered with Police Station Aheri, District Gadchiroli for the offence

punishable under Sections 376 of the Indian Penal Code, be released on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Pindigundam, Post Burgi, Tah. Etapalli, District Gadchiroli till conclusion of the trial.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

10. The application is disposed of.

11. The fees of the appointed Counsel be quantified as per rules.

**(URMILA JOSHI-PHALKE, J.)**

*\*Divya*