



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 25 OF 2024

1. Ram @Samya @ Samadhan
Harishchandra Rathod
Age : 19 yrs. Occu. Labour
R/o. Ambejawalge Tanda,
Tq. & Dist. Osmanabad.
2. Manesh @ Pilya Sheshrao Chavan
Age : 24 yrs. Occu. Labour
R/o. Ambejawalge Tanda,
Tq. & Dist. Osmanabad.

....APPLICANTS

VERSUS

The State of Maharashtra
Through Police Station Incharge
Osmanabad Rural Police Station
Tq. & Dist. Osmanabad.

....RESPONDENT

...

Mr. A.M. Gaikwad, Advocate for applicants.

Mr. A.A.A. Khan, APP for respondent/State.

...

CORAM : ARUN R. PEDNEKER, J.
DATE : 10.12.2024

ORDER :-

1. Heard learned counsel for the applicants and the learned APP for the respondent-State.
2. The applicants are seeking bail as they are arrested in connection with Crime No. 224/2023 dated 8.8.2023 registered with Osmanabad Rural Police Station, District Osmanabad for the offences punishable under sections 376-D, 323, 506 of Indian Penal Code. The applicants are in jail from 8.8.2023.
3. The informant is brother of the victim/prosecutrix, who has stated in

complaint dated 8.8.2023 that his cousin sister informed him on phone that his younger sister/victim has pain in stomach and that her stomach is visibly bloated. The informant therefore took the victim to the hospital. When the informant asked the victim about her condition, she informed him that when she had been to the pond in the field in the afternoon time before four months, three persons from her locality i.e. present applicants and another juvenile accused had caught hold of her and had taken her into Jawar crop and there they had committed forcible sexual intercourse with her. Thereafter, on many occasions, they had forcible sexual intercourse with her. Applicant No. 2 had also taken the victim to his house and then all the applicants had committed forcible sexual intercourse with her and also threatened her that if she informed about the incident to anybody, they will kill her and as such, the victim had not informed about the incident to anybody.

4. Accordingly, FIR was registered against the present applicants and one juvenile co-accused. Statement of prosecutrix under section 164 of Cr.P.C. was also recorded before filing of the chargesheet.

5. The applicants are arrested on 8.8.2023 and since then, they were behind bars. After completion of investigation, chargesheet is filed. During the pendency of the proceeding, DNA test of the abortus was conducted. The DNA test reflected that applicants and other the juvenile co-accused are excluded to be biological father of abortus and the prosecutrix is concluded to be the biological mother of the Abortus. As such, relying upon the DNA report, bail application was filed by the applicants before the Sessions Court. The Sessions Court, relying upon the judgments in the case of **Vaibhav Bhanudas Ubale Vs. The State of Maharashtra in LD VC Dist. Bail**

Application No. 34/2020 decided on 24.7.2020 and taking into consideration the fact situation that the prosecutrix is suffering from moderate intellectual disability and had clearly stated in the statement under section 164, Cr.P.C. that the rape was committed on her by the applicants and spot panchanama of the spot where the rape was committed was prepared, refused the bail to the applicants. Thereafter, the applicants have filed the present application for releasing them on regular bail.

6. It is the contention of the applicants that prosecutrix suffers from moderate intellectual disability and she is unmarried woman. It is not the case of the prosecutrix that she was in consensual relation with any other person and as such, the statement of the prosecutrix is that only the applicants along with juvenile accused have committed rape on her. However, none of the three accused are found to be biological father of abortus in view of the DNA report which create doubt about the case of the prosecution. It is further submitted that nothing is found on the places which were shown by the prosecutrix as places where the sexual assault was committed by the applicants and therefore, nothing is on the record to connect the present applicants with the alleged crime. The learned counsel for the applicants submits that applicants are in jail since last one year and four months and the bail should be granted to the applicants.

7. Per contra, the learned APP submits that the prosecutrix is suffering from moderate intellectual disability and she has clearly taken the names of the applicants in her police statement and in her statement under section 164 of Cr.P.C. before the Magistrate and she has also shown the places where offence had taken place. The learned APP submits that merely because DNA report does not match, the applicants are not entitled for bail

and the same should not be granted to them as there is statement of prosecutrix on record. The learned APP relies upon the judgments in the case of **Sunil V. State of Madhya Pradesh, reported in 2017 (4) Mh.L.J. (Cri) 6**, the order passed by this Court in the case of **Vaibhav Bhanudas Ubale Vs. The State of Maharashtra in LD VC Dist. Bail Application No. 34/2020 decided on 24.7.2020 and the order dated 26.7.2022 passed by this Court in Bail Application No. 1810/2021 in the case of Abbas Asmat Ali Vs. The State of Maharashtra.**

8. Having considered the rival submissions from record, it is apparent that applicants are in jail for over one year and four months. Prosecutrix is unmarried woman, who has not pointed out any relations with any other person, but has categorically made statement under section 164 of Cr.P.C. that only the applicants have committed forceful intercourse with her. But the DNA report shows that none of the three persons have found to be biological father of the abortus, which prima facie giving rise to the doubt whether any other persons is involved with the prosecutrix. Whether the prosecutrix has relations with other persons and somebody had taken advantage of her mental condition including the present applicants, would be the matter of trial. At this stage, no conclusion can be drawn about the moderate intellectual disability of the prosecutrix. In view of the D.N.A. report as of now there could be some prima facie doubt raised as regards the whole version of the prosecutrix.

9. Coming to the judgments cited by the learned APP, in the case of **Sunil** cited supra, the Hon'ble Apex Court has observed that a positive result of the DNA test would constitute clinching evidence against the accused, if however, the result of the test is in the negative i.e. favouring the accused

or if DNA profiling had not been done in a given case, the weight of the other materials brought on record by the prosecution may have to be looked into. The Hon'ble Supreme Court in para 4 has observed as under :-

".....A positive result of the DNA test would constitute clinching evidence against the accused, if however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials brought on record by the prosecution that we may now turn to."

10. This Court in the case of **Vaibhav Ubale** cited supra has observed at para 6 as under :-

"6 The case against the applicant is serious one of committing gang rape by three persons and taking advantage of a situation of a poor helpless victim girl. The applicant has indulged into an act of rape. The mere fact that the DNA report do not support the paternity is not ground to release the applicant at this stage. There is every likelihood that he will pressurize the victim girl once being released on bail. The fact that he is a young boy itself is not sufficient to release him on bail, in light of the material collected by the investigating agency against him.

No case for his release on bail is made out.

The application is rejected."

11. This Court in the case of **Abbas Asmat Ali** cited supra, having considered facts situation has although DNA report was in favour of the accused, refused to grant bail to the applicants therein.

12. Coming to the judgments cited by the learned counsel for the applicants, in the case of **John Maneul Felsha Dsouza Vs. State of Maharashtra** reported in 2005 ALL M.R. (Cri) 3073, this Court in para 7 has observed as under :-

"7. DNA test in the present case is conducted by the Assistant Chemical Analyser to the Government Forensic

Science Laboratory, Mumbai. If one goes by the result of the DNA test then the entire version of the prosecutrix becomes doubtful. The report of the DNA test cannot be ignored altogether at this stage as report is by the Chemical Analyser from the Government Laboratory. The Applicant has been arrested on 11th December, 2004. Thus the Applicant is in custody for last more than 7 months. The charge-sheet is admittedly filed. Apart from the delay in filing the F.I.R., the result of the DNA test entitles the Applicant to the relief of bail. However, while on bail the Applicant will have to be subjected to restrictions to ensure that the witnesses are protected."

13. So also in the case of **Manoj Sitram Varma Vs. The State of Maharashtra and others** decided by this Court on 21.12.2023 in **Bail Application No. 3778 of 2021**, considering the DNA test report which excluded the applicant therein to be biological father of the baby of the victim, granted bail to the applicant therein. In the case of **Rajnishkumar Premlal Mishra Vs. State of Maharashtra** reported in 2022(2) Mh.L.C. (Cri) 303, this Court released the accused therein as the DNA report excluded applicant to be biological father of abortus of victim.

14. Considering the above judgments cited by the learned counsel for the applicants and the learned APP, this Court would take into consideration various factors to decide whether bail can be granted to the applicants or not. Except oral statement of prosecutrix, there is nothing on record connecting the applicants with the present crime. The Applicants are in jail for more than one year and four months. The trial will take long time to conclude. The DNA test report clearly excluded the applicants to be biological father of the abortus of the victim. The prosecutrix has also not alleged that apart from the accused persons any other person had forceful or consensual sexual intercourse with her. The evidence available is only in

terms of the statement of the prosecutrix, who is allegedly suffering from moderate intellectual disability. Nothing incriminating is found against the applicants on the places shown by the prosecutrix. During trial the question of moderate intellectual disability of the prosecutrix will be decided. The prosecutrix is of 28 years of age and not a minor girl. Considering the above totality of the circumstances, this court hold that this is the fit case where bail can be granted to the applicants.

15. In view of the above, the application is allowed in the following terms :

- a] The applicants shall be released on bail in connection with Crime No. 224/2023 dated 8.8.2023 registered with Osmanabad Rural Police Station, District Osmanabad for the offences punishable under sections 376-D, 323, 506 of Indian Penal Code , on furnishing PR bond of Rs.15,000/-, each, with one or two sureties in the like amount to the satisfaction of the trial Court.
- b] The applicants, upon being released on bail, shall not contact the informant, in any manner whatsoever, during the pendency of the trial.
- c] The applicants shall co-operate with the trial Court and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.
- d] The applicants shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses and other persons concerned with the case.
- e] The applicants, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and

residential address with updates in case of any change.

16. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

17. It is also clarified that the observations made in this order are prima-facie observations and limited to the disposal of the present bail application only. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

The application stands disposed of.

[ARUN R. PEDNEKER, J.]

ssc/