



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

968 BAIL APPLICATION NO. 206 OF 2024

Swapnil Deepak Bhalshankar

VERSUS

The State of Maharashtra and another

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Advocate for Applicant : Mr. R.S. Deshmukh, senior advocate a/w
Sanket S. Jadhav i/b Mr. D.R. Deshmukh and Ms. Vaishali A.
Chavan

APP for Respondent No.1: Mr. Satish A. Gaikwad

Advocate for Respondent No.2 : Mr. C. B. Choudhari

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 10th MAY, 2024.

PER COURT :-

1. This is an application for granting bail under section 439 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") in connection with crime No. 249 of 2023 registered with Waluj police station, District Aurangabad for the offences punishable under Sections 376(3), 376 (2-n) of I.P.C. and under Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012. His application with similar prayer below Exh.6 in Special Case No. 383 of 2023 came to be rejected by the learned Additional Sessions Judge, Vaijapur, vide order dated 4.11.2023.

2. It is averred in the report that the step daughter of the informant who was 13 years old was subjected to aggravated sexual assault by her step father i.e. the present applicant. It was revealed

that when the victim child was taken to the hospital she was 5 months pregnant. On inquiry, it was revealed that the applicant, step father of the victim child, committed aggravated sexual assault on her. The MTP was done. The report was lodged. Samples for DNA was collected. The blood samples of the applicant and victim were also collected and were sent to the DNA. The DNA report is received, which is positive.

3. Learned advocate for the applicant submitted that the applicant is falsely implicated in the crime. He has roots in the society, he will not flee away from trial and the trial will take a long period. It is lastly prayed to allow the application.

4. Learned A.P.P. for the respondent-State has strongly opposed the application and submitted that the applicant is step father of the victim child. Taking disadvantage of her age and illness, the applicant committed aggravated sexual assault on her for many times by which the victim child became pregnant. After lodging the report, the samples for DNA was collected and as per the DNA report, the blood of victim child and the applicant is matched and it is concluded that the applicant is the biological father of the child. He therefore, submitted to reject the application as the applicant is involved in serious crime.

5. Perused the report and particularly the statements of

witnesses. The medical termination of pregnancy of the victim child was conducted. After MTP was done, the female baby child, which was in the womb, died. Considering the fact and circumstances of the case, particularly DNA report, it is established that the applicant and victim child are concluded to be the biological father and mother respectively of that baby child, who died after the MTP was done. Thus, there is strong evidence against this applicant. Thus, considering the ratio laid by the Hon'ble Supreme Court in the cases of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559***, and ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684***, this applicant is not entitled for bail. Further, considering the age of the victim child, her illness as she was partially blind, seriousness of the crime and the object of POCSO Act, the possibility of pressurizing the victim child, her mother and other witnesses, by the applicant cannot be ruled. The application thus deserves to be rejected. The application is therefore, rejected.

6. The fees of learned advocate Mr. C.B. Choudhari, who was appointed to represent the cause of respondent No.2 be paid by the High Court Legal Services Sub Committee, Aurangabad as per Rules.

(SANJAY A. DESHMUKH, J.)