

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 641 OF 2024

Tukaram Savala Gade

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Rahul R. Karpe

APP for Respondent/State : Mrs. D.S. Jape

Advocate for Respondent No.2 : Ms. Priyanka P. Shinde (appointed)

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CORAM : S.G. MEHARE, J.

DATED : JULY 11, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The applicant seeks bail in Crime No.432 of 2023 registered with Karjat Police Station, District Ahmednagar for the offence punishable under Sections 376, 376(2)(n) of the Indian Penal Code.
3. The prosecution has a case that the applicant did forceful sex with the victim who was 36. The counsel for the victim has a specific case that the applicant took the advantage of her simplicity and inability to understand the worldly affairs properly. She was pregnant from him and delivered a child. Considering her mental condition i.e. inability to understand the worldly affairs, the applicant exploited her. The DNA report is awaited.

4. Learned APP would submit that as per the directions of this Court, the police went to the office of Chemical Analysis but it has been informed that the DNA report is yet not prepared. She would also argue that it is a serious crime and a naive women who was deserted by her husband has been exploited. Therefore, it could not be said that it was her free or conscious consent.

5. Learned counsel for the applicant would submit that the arguments of the learned APP and learned counsel for the victim are based upon the statements of the nearby persons. The victim did not face the medical examination for her mental condition. The medical examination could throw light on her so-called mental inability. That apart, there are no allegations of forceful sex. The victim was a major. She never objected or resisted the allegations against the applicant. She is a relative of the applicant. Since she was deserted by her family, he barely supported her. The investigation has been completed. Nothing is to be recovered from the applicant. The DNA report would have its effect on trial. Therefore, till DNA report is received, the detention of the applicant would serve no purpose.

6. Considering the above submissions, it reveals that the victim was voluntarily residing with the applicant. There are no allegations of resistance by her. She also refused the medical examination. Considering the facts of the case and the inter se relationship between the parties, it would not be useful to keep the

applicant behind bar. However for fair trial, certain conditions may be imposed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Tukaram Savala Gade, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in the above crime, on the conditions that;
 - (a) The applicant shall not tamper with the prosecution witnesses and shall attend the trial on each and every date.
 - (b) The applicant shall not contact the victim or cause any harm to the victim or her child, if she has delivered.
 - (c) The applicant shall not enter the place where the victim is presently residing till conclusion of the trial.
- (iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad do pay the fees of the appointed counsel for respondent no.2/victim as per schedule.

(S.G. MEHARE, J.)