



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 BAIL APPLICATION NO. 1429 OF 2024

AMOL @ GOTYA ASHOK THORE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondents-State : Mr. G. O. Wattamwar.
Advocate for Respondent No.3 : Mr. Nikhil D. Jaiswal
(Appointed Through Legal Aid).

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CORAM : S. G. MEHARE, J.

DATE : 09.09.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondents-State and learned counsel for the victim/respondent No.3.

2. The applicant seeks bail in Crime No.135 of 2024, registered with Pachod Police Station, District Aurangabad, for the offences punishable under Sections 452, 376, 376(2)(J), 506 read with Section 34 of the IPC and Sections 4 and 6 of the POCSO Act and Section 3(1)(W) of the SC and ST Act and Section 9 of the Prohibition of Child Marriage Act.

3. The prosecution has a case that on the day of the incident, the electric power was off. It was raining and

lightning. At about 10.30 p.m. the applicant entered the room where the victim was sleeping without locking from inside. He did forceful sex with her. Her husband came to home. He knocked on the door and after some time, she could rescue from the applicant and opened the door from inside. After committing the sexual assault, he hide behind the cooler. Her husband find him. She was minor at the time of the incident. She was forcefully raped.

4. Learned counsel for the applicant would submit that the prosecution case is improbable that it was a forceful sex. The entire circumstances reveal that it was a consensual sex. Taking a time to open the door itself shows that she took sufficient time to get prepared to open the door. On the same day, the applicant has lodged the report against her husband. He submits that her report and statement under Section 164 of the Cr.P.C. are silent about the assault by the applicant. However, she has developed the story before the Medical Officer that the applicant assaulted her with a belt. No belt as such was recovered from the spot of the incident. Probably, her husband might have assaulted her. She being a married woman, tearing her vagina is quite natural. The chage sheet is

filed. There are no antecedents to the discredit of the applicant. Hence, he may be granted bail.

5. Learned APP and the learned counsel for the victim have vehemently argued that the the allegations levelled against the applicant do not show that it was a case of consensual sex. The victim narrated the incident to the Medical Officer alleging that the applicant did forceful sex with her and also assaulted her with belt. Its signs were found on her person. The opinion of the Medical Officer clearly indicates that it was a case that penetrative sexual assault. The offence is serious. They are residents of the same village. The applicant is silent, in his report, that the husband of the victim assaulted him as well as the victim. Therefore, the developed story of assaulting the victim by her husband could not be accepted. They prayed to reject the bail application.

6. Perused the papers. It seems that the victim was alone in her home and her husband went on job. The prosecution at this juncture has no explanation why the time took to open the door after knocking on by her husband. The overall circumstances shows that she did not complain against the applicant that he assaulted her with a belt. The applicant had lodged a report against her husband alleging that he assaulted

him with belt. Probably, he was beaten soon after the incident came to the light. She was a married girl below 18 years. So she must have to maintain marital relations with her husband. Considering the overall facts, no purpose would be served keeping the applicant behind bar. However, the apprehension of the victim and the witnesses may be guarded by imposing certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **AMOL @ GOTYA ASHOK THORE** be released on bail on furnishing PB. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :
 - (a) The applicant should not tamper with the prosecution witnesses and contact the victim in any mode or manner, till the conclusion of trial.
 - (b) He should not stay in village Kekat Jalgaon, Taluka Paithan, District Aurangabad for three months from the date of his release.
 - (c) He should not threat her husband at his work place.

- (d) He should attend the trial on each and every effective date.
- (iii) The Secretary, High Court Legal Services, Sub-Committee, Aurangabad do pay the legal fees to advocate Mr. Jaiswal as per the schedule.

(S. G. MEHARE, J.)

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vmk/-