



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 BAIL APPLICATION NO.1442 OF 2024

AKASH RADHAKRUSHNA UMBARKAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Shermale K. N.

APP for Respondent-State : Mr. A. S. Shinde.

Advocate for Respondent No.2 : Adv. Krushnabai D. Bhande
(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 respondent-State and learned counsel for the victim/respondent No.2.

2. The applicant seeks bail in Crime No.351 of 2024, registered with Karjat Police Station, District Ahmednagar, for the offences punishable under Sections 363, 376 of the IPC and under Section 3 and 4 of the POCSO Act and Section 3(2)(V) and 3(2)(VA) of the SC and ST Act.

3. It has been alleged against the applicant that he eloped the victim who was around 17 plus at the time of the incident and did forceful sex with her.

4. Learned counsel for the applicant would submit that the victim met the applicant on Instagram. Their relationship was developed. She herself went to Pune without intimating her parents and called him on phone, so he went there. As per her version before the Investigating Officer, they stayed together only for a day and next day police came. However, in that intermittent period, they had no sex. The applicant never knew the caste of the applicant that she belongs to Scheduled Tribes. She was able to understand the consequences of her acts. However, the family members might have pressure her to state against the applicant. Till date though the charge sheet has been filed the statement of the victim recorded either under Section 161 or 164 of the Cr.P.C. has not been provided to him. The overall facts reveal that there was no offence as alleged. It may be a just oppose to their relationship. Hence, he may be granted bail.

5. Learned APP and the learned counsel for the victim have vehemently opposed the application. They would submit that the victim was belonging to the Scheduled Tribe community. She was innocent. Therefore, the applicant trapped her and took her to Pune under the promise to provide her a job. He did forceful sex with her without her consent. She appeared

before the learned Sessions Judge and stated that she did not consent for the sex. She was trapped under the promise to provide a job to her. Hence, they prayed to reject the application.

6. The papers reveal that the applicant and victim were met on Instagram. Her first statement before the Medical Officer does not disclose that the applicant did forceful sex with her. On the very next day, the police apprehended them and brought to their place. Neither the statement under Section 161 or 164 of the Cr.P.C. placed before the Court. So, the adverse inference may be drawn that the victim did not support the prosecution. The statement before the Sessions Court is concerned, the possibility of tutoring cannot be ruled out. There is absolutely no substance in the argument of the learned counsel for victim that she belongs to Scheduled Tribe, she is innocent, therefore, she has been exploited sexually.

7. The material investigation has been completed. The victim was about 17. So, she was able to take the appropriate decision and knew the consequences of the act she was doing. In the facts and circumstances of the case, the applicant deserves bail. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **AKASH RADHAKRUSHNA UMBARKAR** be released on bail on furnishing P.B. 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 contact the victim in any mode or manner.
 - (b) He should not go to the village where the victim resides.
 - (c) He should not tamper with the prosecution witnesses.
 - (d) He should attend the trial on each and every date.
- (iii) The Secretary, High Court Legal Services, Sub-Committee, Aurangabad do pay the legal fees to advocate Bhande as per the schedule.

(S. G. MEHARE, J.)

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vmk/-