

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1545 OF 2024

Saurabh Raosaheb Khemnar

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. R.K. Temkar h/f Mr. Rajale Gulab B.

APP for Respondent/State : Mr. S.B. Pulkundwar

Advocate for Respondent No.2 : Mr. Shinde Shubham Kanhu

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CORAM : S.G. MEHARE, J.

DATED : OCTOBER 22, 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.100 of 2024 registered with Ghargaon Police Station, District Ahmednagar for the offences punishable under Sections 376(3), 109, 305, 504 r/w 34 of the Indian Penal Code and Section 4, 8, 12, 17 and 21 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act' for short).
3. It has been alleged against the applicant that on the day of the incident, he forcefully took her into a shop and asked his friend to lock the door from outside. He did repeated sex with the victim against her consent. Since she felt ashamed of the rape, she committed suicide.

4. As against this, the applicant has a stand that he and the victim were in relationship. He never did forceful sex with her. Perhaps, her family members might have learnt about the relationship. Hence, she committed suicide. He has produced on record the whatsapp chat and some photographs to believe his stand that the victim and he were in love relationship. No incident as such happened. The false allegations have been levelled against him, since the deceased suddenly committed suicide.

5. The learned counsel for the applicant supporting the documents had submitted that the applicant is 21 years old boy and resident of the same village. The victim was 15 years and 8 months old at the time of the alleged incident. The victim was meeting the applicant in that shop and they were consuming some eatables and cold drinks. Therefore, the recovery of those articles from the shop does not link the applicant with the crime. Though it has been argued that her hands were tied, there were no marks on her person of tying the hands with handkerchief. He would submit that he does not know the reason for sudden suicide by the deceased. The investigation has been completed. Nothing is to be recovered from the applicant. Hence, he may be granted bail.

6. Learned APP has opposed the application on the ground that the victim was not willing to do sex but the applicant did forceful sex with her against her will. The offence under Section 305 of the

Indian Penal Code is serious. The applicant abetted her to commit suicide. She could not tolerate the forceful sex done by the applicant; hence, she ended her life.

7. Learned counsel for the victim with force referred to many documents. He has referred to the spot panchnama, the oral dying declaration of the victim, statements of her mother and maternal brother. Referring to the spot panchnama from where some articles were recovered, he vehemently argued that this recovery of articles supports the allegations against the applicant that he took her to the shop forcefully and did sex with her against her will. He has seriously levelled the allegations against the investigation officer that the post-mortem was not done properly. There were abrasion marks on her person. So, the possibility of causing the injury to her at the hands of the applicant cannot be ruled out. He submits that at this juncture, the investigation is not on the proper directions. The chats placed on record does not indicate the phone numbers. Unfortunately, he even denied the photographs. However, after consulting with the counsel assisting him, he confirmed that the photographs were of the victim and the applicant. One of the screenshot shows victim and the applicant on video call. However, his objection is that those are not reliable documents and investigation on this fact has not been done. Therefore, these documents cannot be blindly accepted at this juncture. He also referred to the photographs

and pointed out the abrasions on the forearm of the victim. He alleged against the investigation agency that no proper investigation has been done. However, the injury no.1 in post-mortem report column no.17 falsifies his argument. It has been mentioned that 5-6 days old hesitation marks noted on right forearm on radial side near elbow. From this fact, it could be said that the medical officer has carefully examined the body before the post-mortem. The second injury is possible due to the acts of the person committing suicide. The bottle of soft drink namely sting does not contain poisonous substance.

8. Considering the submissions of the respective counsels, it appears that the applicant and the deceased were in relationship. She was 15 years and 8 months old. She was continuously in contact with the applicant. This goes to show that she was mentally fit to take the decisions of her life. Barely recovering some articles from the spot of the incident which has no prima facie connection with the applicant could not be used to brand the applicant that he was instrumental or abetted the deceased to commit suicide. Recording these observations along with other materials produced before the Court, it is difficult at this juncture as argued by the learned Advocate Mr. More to believe that there was no proper investigation and the applicant has abetted the deceased to commit suicide.

9. For the above reasons, the application deserves to be allowed. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Saurabh Raosaheb Khemnar, 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 he should not tamper with the prosecution witnesses and should attend the trial on each and every effective date.

(S.G. MEHARE, J.)