



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1577 OF 2024

SOHAIL TAWAKKAL SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Sagar Prakash Mahale along with
Mr. Shaikh Mazhar A. Jahagirdar,
APP for Respondent No.1 : Ms. Vaishali S. Chaudhari
Advocate for Respondent No.2 : Mr. S. A. Kamble holding for
Mr. Shubham D. Jaybhar
(Appointed Through Legal Aid)
...

CORAM : S. G. MEHARE, J.
DATE : 07-10-2024

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1 and the learned counsel appointed for respondent No.2.
2. The applicant seeks bail in C.R.No.275 of 2024 registered with Nagar Taluka Police Station, District Ahmednagar, for the offences punishable under Section 363 of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.
3. The prosecution has a case that the applicant and the victim were talking to each other on mobile phone. One day, the relative of the victim learnt that she was talking to someone at odd hours. On the next day, the victim was found missing. The applicant took

her to one field though she denied to go with him. He threatened her to kill himself if she did not come with him. He did forcible sex with her in the field. On the next day, both were arrested from same field. Her statement was recorded around four days after the incident.

4. The learned counsel for the applicant submits that since their affair was disclosed to the relatives of the victim, she was pressurized to state against him that the applicant did forcible sex with her. She was 17 plus. She was willing to marry. Hence, she went with him. There were no injuries of sexual assault to believe that there was forceful sex. In such circumstances, the medical evidence could not play a vital role in deciding bail application.

5. Per contra, the learned A.P.P. and the learned counsel for the victim have vehemently argued that it was purely a case of sexual assault. The victim was a minor. Hence, her consent was immaterial. They are belonging to the different religion. There may be a threat to the life of the victim as well as her relatives. Hence, the applicant may not be granted bail.

6. It appears that the chargesheet does not disclose the statement of the victim under Section 164 of the Code of Criminal Procedure. Though the allegations of forceful assault of sex have been made, there were no injuries to believe that forceful sex was done without her consent. She was 17 and able to take decision

about her. She had a choice not to leave home though the applicant called her to flee away and marry her. The evidence against the applicant is balancing. He is behind bar for sufficient time. The chargesheet has also been filed. They are not resident of the same village. Therefore, the witnesses may not be harmed. For the above reasons, the applicant deserves bail. Hence, the order:-

ORDER

- i) The bail application is allowed.
- ii) Applicant – Sohail Tawakkal Shaikh be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of the like amount, in the above crime for the aforesaid offences, on the conditions that,
 - (a) He should not tamper with the prosecution witnesses.
 - (b) He should not contact the victim in any mode or manner till the trial is concluded.
 - (c) He should not enter the village where the victim is residing.
 - (d) He should not threat or disturb the witnesses coming to the Court for leading the evidence.
 - (e) He should attend the trial on each effective dates.
- 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.)

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