



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 BAIL APPLICATION NO. 1647 OF 2024

BHAIRAVNATH BHAGWAT UGHADE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Zambare Sudheer Ramdas.

APP for Respondent/s-State : Mr. G. O. Wattamwar.

Advocate for Respondent No.2 : Mr. R. R. Karpe.

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CORAM : S. G. MEHARE, J.

DATE : 15.10.2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for respondent No.2.

2. The applicant seeks bail in Crime No.337 of 2024, registered with Karjat Police Station, District Ahmednagar, for the offences punishable under Sections 363, 376(3), 366-A of the IPC and Section 4 of the POCSO Act.

3. The victim was 15 years and 9 months old. She left the home secretly on 10.05.2024. Therefore, her parents had lodged a missing report. However, on 14.05.2024 she was found alone sitting on Daund Railway Station. She was taken into custody and brought to her village. Immediately after

producing her before the police, she has narrated the story that she had one unknown Instagram friend. She called him and he told her that he is in Mumbai. She expressed her desire to meet him. He told her that he is coming to Pune and she told him that she will come there. So, she took Rs.2,000/- from home and left the home at around 4.30 p.m. She did not state anything against the applicant or anybody else. However, subsequent to her first statement, the story has been developed and it has been alleged against the applicant that he was the tempo driver. He took her to village Chincholi and then he took her to the forest and did forceful sex with her. She developed a new story. She disregarded first statement after around 15 days of her statement under Section 161 of the Cr.P.C.

4. About her silence, the learned APP as well as learned counsel for the victim have argued that she was ashamed on her acts. Therefore, she did not disclose. However, her mother revealed a serious offence of forceful sex without her consent. Her supplementary statements were recorded. The GPS supported the allegations about the presence of the applicant on the place where he did forceful sex. He was also identified in the test identification parade. His master also explained that on the day of the alleged incident, he was driving the so called

vehicle used for committing the crime. On that day, he was returning from Mumbai after delivering Papaya. Reading the various papers, both learned counsels have tried their level best to convince the Court that it was an unusual act of exploiting a child of around 16 years old. The offence is serious. Hence, the applicant does not deserve bail.

5. Per contra, learned counsel for the applicant would submit that a story concocted after thought. At the first instance, there were absolutely no allegations against the applicant. She had voluntarily stated before the police that nobody eloped her and nothing happened with her. Since the family of the applicant felt that something happened, thereafter, she might have convinced to develop the story and therefore, the applicant has been indulged in the crime. The applicant has no role to play. Even he does not know the victim or her family members. The conduct of the victim is material. She seems to be so sharp in suppressing the facts. In normal course, no girl of such age would mistaken to disclose the serious incident. He also argued that she is also not from a highly reputed family that she might have been apprehended of loosing family reputation. They are from labour class. Since there is a material variance in the allegations in the statement

of the victim who was the best witness to the alleged incident and the completion of the investigation, the applicant deserves bail.

6. Perused the papers. There appears substance in the submissions of the learned counsel for the applicant. There was nothing to pressure the victim for not disclosing the serious crime, against the applicant. She had left the home at her own. She has a case that one unknown rickshaw (*tumtum*) left her at the place where she was asked for. She had taken Rs.2000/- with her. Therefore, it is a question of fact whether she had taken money from the applicant. The explanation is subject to the test in examination before the Trial Court. Considering the conduct of the victim and completion of the investigation, the Court thinks it appropriate to grant bail to the applicant. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **BHAIRAVNATH BHAGWAT UGHADE** 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 not tamper with the prosecution witnesses.
- (b) He should attend the trial on each and every effective date.

(S. G. MEHARE, J.)

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vmk/-