

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1690 OF 2024

Kevalsingh @ Sanju Jaysingh Kachvaa

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. V.D. Sapkal, Senior Counsel i/b Mr. Patil
Vijay Bhalerao

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

Advocate for Respondent No.2 : Mr. Mahale Sagar Prakash h/f Mr.
Shaikh Mazhar A. Jahagirdar

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CORAM : S.G. MEHARE, J.

DATED : OCTOBER 22, 2024

PER COURT:-

1. Heard learned senior counsel for the applicant, learned APP for the State and learned counsel for the victim.
2. The applicant seeks bail in Crime No.53 of 2024 registered with Chalisgaon Police Station, District Jalgaon for the offences punishable under Sections 376(2)(j)(d) of the Indian Penal Code and Sections 3(a), 4(2), 5(g), 6, 16 and 17 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO Act' for short).
3. A girl of 14 years had levelled serious allegations against the applicant that he did sex with her. She narrated that she was working with a third lady accused. She took her to the hotel of the accused no.1. Then she took her to a hut behind the hotel, accused

no.1 took her photograph and sent to the present applicant. He came there. Both of them did sex with her. He has also applied oil for anal sex. Then, she went to home. However, after some days, she had bleeding. She was taken to the hospital. A private doctor treated her. Since she narrated the incident to the mother, the report was lodged.

4. The learned senior counsel for the applicant has vehemently argued that there is inordinate delay of 15 days in lodging the FIR. There were absolutely no injuries to her private parts. Her medical examination for sexual assault does not support her allegations. Her narration to the medical officer shows a different story. The expression of opinion that sexual intercourse cannot be ruled out is not supported with other documents. The applicant did not sex with the victim. The statements of the witnesses do not establish the nexus of the applicant with the crime. The CDR does not match with the timing as alleged in the FIR. From bare chatting between the applicant and co-accused, it has been wrongly tried to involve the applicant in the crime. The said communication was between two males is common. The applicant is a respectable person of his town. He would submit that the allegations levelled against the applicant are false and concocted.

5. The learned APP and learned counsel for the victim have vehemently argued that the third lady accused took her to the spot of the incident. The cook and other workers of the hotel run by accused

no.1 have categorically stated that accused no.3 had brought the victim to the spot of the hotel. She was sent into a hut. Both male accused went inside. That time, accused no.3 was sitting outside the hut and the door was shut from inside. After some time, both came out. Her allegations were specific that coconut oil was applied for anal sex. From the spot of the incident, the coconut oil bottle was seized. One of the workers in the hotel has specifically stated that she was also forcibly intercoursed. She was the victim of the sexual assaults of the applicant and other accused. It is true that on 27.03.2024, the victim had been to the doctor. It was told that she had bleeding due to menstruation. He prescribed the medicine for her. However, that does not mean that there was no sexual assault. The photograph of the victim lying on the bed was shared to the applicant by the co-accused. Their conversations show that the applicant is habitual to do sex with different women. The presence of the applicant is established on the spot of the incident. The CDR also matches with the allegations levelled against the applicant. Referring to various documents, both learned APP and learned counsel for the victim have vehemently argued that the victim has no reason to implicate the applicant falsely. In such a situation, the allegations are to be considered with other oral evidence. There may be explanation by the medical officer during trial why the signs of sexual assault were not found. They would submit that it is a gang rape done with a

poor girl of 14 years. Her poverty has been exploited. The lady accused no.3 had supplied the young girl to the applicant and other co-accused. The provisional opinion of the medical officer is relevant, who has opined that her examination did not suggest performance of recent sexual acts. Therefore, it can be said that she was sexually assaulted.

6. Learned counsel for the victim also pointed out the history narrated by the applicant to the medical officer and argued that the applicant had been to the spot of the incident, that establishes his presence on the spot of the incident at the time of the alleged incident. He clearly narrated to the medical officer that he went to the spot of the incident to have a water as he was travelling. He saw the victim from distance but had no physical contact with her. This establishes his presence on the spot of the incident. If the applicant was not present there and committed forceful sex, the victim has no reason to identify him. For the above reasons, they prayed to dismiss the application.

7. Perused the papers with the assistance of the respective counsels. The evidence collected against the applicant clearly establishes that he was present there on the day of the incident. He went inside the hut and closed down the door from inside. The photograph of the victim shared by the co-accused has been recovered. Their chats reveal that both of them were trapping young

girls for sex. The statement of the employees and the workers of the hotel of the co-accused are also specific about the acts and conduct of the applicant, which is sufficient to believe the victim at this juncture, though the doctor could not find the signs of sexual assault. The victim was systematically trapped by a third lady accused. She took her there. Then the co-accused called the applicant on phone. He came there and both of them did sex with the victim. From the papers, there appears no reason to the victim to lie against the applicant and other co-accused. The other evidence collected by the prosecution, *prima facie* inspire the confidence that the incident happened. It was a serious crime of gang rape.

8. For the above reasons, the application stands dismissed.

(S.G. MEHARE, J.)