

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1701 OF 2024

Shaikh Hussain Shaikh Ibrahim

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. V.S. Wakale h/f Ms. Shinde Sunita R

APP for Respondent/State : Mr. G.O. Wattamvar

Advocate for Respondent No.2 : Mr. Kulkarni Suvidh S.

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CORAM : S.G. MEHARE, J.

DATED : OCTOBER 25, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel appointed for victim.
2. The applicant seeks bail in Crime No.185 of 2023 registered with Satara Police Station, District Aurangabad for the offences punishable under Sections 376-DA, 376(3), 376(2)(j), 376(2), 366-A, 201 of the Indian Penal Code, Sections 4, 5-L, 6, 8, 9-L, 10, 11, 12 and 16 of the Protection of Children From Sexual Offences Act and Sections 66-E and 67-B of the Information and Technology Act.
3. By this successive bail application, the applicant is claiming bail. He would submit that after rejection of the first bail application of the applicant, this Court took a view that the conduct of

the victim is material. The allegations levelled against the co-accused who has been granted bail were identical. Therefore, he deserve bail.

4. On the ground of parity and successive bail, the learned APP and learned counsel for the victim have vehemently argued that the applicant has to show the change in circumstances. This Court, while granting bail to the accused, had only considered the reason that there may not be a speedy trial as the chemical analysis report was awaited. He was not granted bail on merit. Therefore, the applicant cannot claim the parity. The trial has been commenced and four witnesses have been examined. The trial may be concluded within a short period. However, if the applicant is granted bail, he may abscond.

5. As far as the merit of the matter is concerned, the allegations levelled against the applicant were that he knew the relationship of the victim with another co-accused and under the threat to viral the video graphs, she was blackmailed and the applicant was taking her to different places against her will and doing forceful sex. Under these circumstances, it cannot be said that the applicant deserves bail. So far as the arguments of the learned counsel for the victim and learned APP that the co-accused was not granted bail on merit is concerned, this Court has recorded the specific finding about the conduct of the victim that she was going with anybody either he is known or unknown to her at odd hours and never resisted

for sex. The overall conduct of the victim was recorded in earlier order. Seeking bail on parity even after his earlier bail application has been rejected, is maintainable and the parity may be applied.

6. The same rule of the conduct of the victim may also apply to the claim of the applicant. Her conduct was not natural. Though the learned counsel for the victim argued that the victim was 14 years old at the time of the incident, her conduct would not support him to accept his argument that she was minor and her consent was immaterial. Considering the law of parity, condition in successive bail application and conduct of the victim, the Court is of the view that further incarceration of the applicant would serve no purpose. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant, Shaikh Hussain Shaikh Ibrahim, 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 ;
 - (a) The applicant should not tamper with the prosecution witnesses and should attend the trial on each and every effective date.
 - (b) The applicant should not contact or threat the victim in any mode or manner till the trial is concluded.

(4)

(c) The applicant should not enter the area where the victim resides till the trial is concluded.

(d) If the trial is protracted by the applicant or other co-accused, the prosecution is at liberty to file an application for cancellation of bail.

(iii) The Secretary, High Court Legal Services Sub-Committee, Aurangabad is directed to pay the fees to the appointed counsel for the victim as per schedule.

(iv) These observations are restricted to bail application only.

(S.G. MEHARE, J.)