



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

**BENCH AT AURANGABAD**

**BAIL APPLICATION NO.2296 OF 2023**

Vishal Vitthal Dhole,  
Age-39 years, Occu:Business,  
R/o-S. No.310/311, Sasane Nagar,  
Lane No.9, Hadapsar, Pune City, Pune

**...APPLICANT  
(Orig. Accused)**

**VERSUS**

The State of Maharashtra,  
Through the Police Officer,  
Shrirampur Police Station, Shrirampur,  
Taluka-Shrirampur, District-Ahmednagar.

**...RESPONDENT**

...  
Ms. Sunita G. Sonawane Advocate for Applicant.  
Mr. N.S. Tekale, A.P.P. for Respondent-State.  
...

**CORAM: SMT. VIBHA KANKANWADI, J.**

**DATE : 27<sup>th</sup> FEBRUARY, 2024**

**ORDER :**

1. Present Application has been filed under Section 439 of the Code of Criminal Procedure. The applicant is the original accused No.2 (as per charge-sheet) in Sessions Case No.3 of 2021 pending before the learned Additional Sessions Judge, Shrirampur, District-Ahmednagar. Applicant stands prosecuted

for committing offence punishable under Sections 376, 376(2) (n), 376(d), 385, 386, 420, 323, 120 (B), 506 read with Section 34 of the Indian Penal Code.

2. It will not be out of place to mention here that the applicant had approached this Court by filing Bail Application No.201 of 2021, which came to be withdrawn on 21<sup>st</sup> May 2021. Thereafter applicant filed Bail Application No.1023 of 2021, which came to be rejected by this Court on 10<sup>th</sup> December 2021. Thereafter applicant again filed Bail Application No.460 of 2022 which came to be rejected by this Court by giving detail order, on 28<sup>th</sup> April 2022.

3. Thereafter the applicant had approached the Hon'ble Supreme Court by filing **Special Leave Petition (Criminal) Diary No. 17563 of 2023** to challenge the order passed by this Court on 28<sup>th</sup> April 2022, wherein following order is passed:-

- "1. Delay condoned.
2. Exemption Applications are allowed.
3. Having heard learned counsel for the petitioner at a considerable length and after carefully perusing the material available on record, we are not inclined to grant bail to the petitioner at this stage.

4. The Special Leave Petition is, accordingly, dismissed.

5. It would be open to the petitioner to renew his prayer for bail before the High Court after one year from today which may be considered on its own merits and in accordance with law. (stress supplied)

4. Thus, as per Clause No.5 of the order passed by the Hon'ble Supreme Court on 10<sup>th</sup> July 2023, liberty was given to the applicant to renew his prayer for bail before this Court after one year from that date, which may be considered on its own merits and in accordance with law by this Court. The applicant has then made a smart move taking into consideration the order passed by this Court in Bail Application No.1000 of 2023 in respect of co-accused on 4<sup>th</sup> September 2023. By the said order, co-accused came to be granted bail and therefore, the present applicant filed Application Exhibit-73 in Sessions Case No.3 of 2021 before the learned Additional Sessions Judge, Shrirampur, who rejected the said application on 6<sup>th</sup> November 2023 and once again, therefore, the applicant is before this Court. The applicant filed the present application on 12<sup>th</sup> December 2023, which is certainly not after one year period as stated by the Hon'ble Supreme Court by order dated 10<sup>th</sup> July 2023. This Court is not saying that the present Application is not maintainable,

but the way that has been adopted deserves to be mentioned. In view of the alleged change in circumstances, this Court is considering the present Application. Important point to be noted is that the applicant has not produced the copies of the orders passed by this Court on 21<sup>st</sup> May 2021, 10<sup>th</sup> December 2021 and 28<sup>th</sup> April 2022 as well as the order passed by the Hon'ble Supreme Court. No doubt, in the Application Exhibit-73 before the trial Court, references have been made to those orders. For fair adjudication, in fact, the applicant ought to have produced copies of those orders before this Court.

5. Heard learned Advocate Ms. Sonawane appearing for the applicant and learned APP Mr. Tekale, appearing for the respondent – State. Perused the charge-sheet.

6. Learned Advocate for the applicant vehemently submitted that the applicant is in jail since the date of his arrest i.e. 22<sup>nd</sup> October 2020 and the trial has not begun. Learned Advocate has produced the certified copy of the Roznama of Sessions Case No.3 of 2021 and submits that the Muddemal article which has been sent to Forensic Science Laboratory ( for short "FSL"), has not been returned so also the report from FSL has not been

produced. On the same ground that there is delay in the FSL report and the trial has not begun, the co-accused has been released and therefore, on the ground of parity the applicant deserves to be released.

7. At the outset, it can be said that ground of parity cannot be only on the ground that the trial has not begun and the Muddemal has not been received along with the FSL report. The role attributed to the applicant is also required to be considered. It is to be noted that on 24<sup>th</sup> April 2023 the charge has been framed. All the accused have pleaded not guilty and therefore, the trial was to commence and it appears that in view of the prosecution request, the matter was adjourned to produce the FSL report from 21<sup>st</sup> August 2023. Thereafter again when the application is filed by the present applicant for bail, time has been consumed in taking say of the original informant and then deciding the matter. We cannot say that there is deliberate delay on the part of the trial Court. No doubt the present applicant is in jail since 22<sup>nd</sup> October 2020. But as regards the role attributed to the present applicant in the First Information Report (for short "FIR") is concerned, it can be certainly said that his role is different from the role attributed to accused No.1. Perusal of the

FIR would show that the allegations are that the present applicant has video graphed the alleged rape committed by accused No.1 and then he has also committed rape on the informant and after giving threat to make the video viral, forcibly taking her ATM Card and demanding amount, huger amount of Rs.61,44,600/- has been extracted from her. As regards the amounts are concerned, there is evidence that has been collected.

8. By pointing out the statement of witness Keshavrao Shetty, learned Advocate for the applicant tried to state that the prosecutrix was allowed to occupy the room which is a hostel for girls only and she was there only for two months. Learned Advocate further submits that this statement is not supporting the FIR and the informant is giving a false statement.

9. We cannot go by one statement only. There is other material available on record.

10. Another fact to be noted is that in the bail order passed in favour of original accused No.1, there are observations by this Court that the informant and the said applicant were childhood

friends and therefore, it is observed that possibility of consensual relationship cannot be ruled out. Here in the present case, the applicant cannot say the same thing. Original accused No.3 is the wife of present applicant. Therefore, no case is made out to grant bail to the applicant.

11. The Application stands rejected.

**[SMT. VIBHA KANKANWADI , J.]**

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