



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 BAIL APPLICATION NO. 2374 OF 2023

Lakhansingh Misrilal Kushwaha

..APPLICANT

-VERSUS-

The State of Maharashtra and others

..RESPONDENTS

Advocate for Applicant : Mr. Andhale Sandip Ramnath

APP for Respondent/State : Mrs.Pratibha J. Bharad

Advocate for Respondent No.3 : Ms. Sayali Tekale (appointed)

WITH

BAIL APPLICATION NO. 2275 OF 2023

Amina @ Sultana Raju Shah

..APPLICANT

-VERSUS-

The State of Maharashtra and another

..RESPONDENTS

Advocate for Applicant : Mr. Shah Subodh P.

APP for Respondent/State : Mrs.Pratibha J. Bharad

Advocate for Respondent No.2 : Ms. Sayali Tekale (appointed)

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 30th JANUARY, 2024.

PER COURT :-

1. The applicants have prayed for bail under section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") in connection with crime No. I 523 of 2022 registered with Rahata Police Station, Dist. Ahmednagar, for the offences punishable under sections 370, 376 (2) (m)(n), 323, 504 and 506 of the Indian Penal Code, 1860 (for short, "IPC") and under sections 3, 4(1), 5, 9 of Immoral Trafficking Act, 1956 and under sections 3(A), 4, 5(J), 2(L),

6, 16, 17 of POCSO Act, 2012.

2. Informant averred in the report that applicant – Amina is her maternal aunt. Her parents are no more. Her step mother was harassing her. Therefore, she came to reside with Amiina at Rahata, Tq. Rahata, Dist.Ahmednagar as per request of her maternal uncle. On 01.10.2022, at about 6 p.m., her aunt told her that they have to go to Shirdi. Informant, her maternal aunt and Bhavana, the friend of Amina went to Shirdi. When they were near to the temple, Amina told her that one person will come, he will take her in a room and she should do as per his wish. She threatened that if she refuses to do so, she will be expelled from the house. She was frightened. At about 7.30 p.m., one person came there in white colour car having white clothes named as Shendiwala, aged about 50-54 years. He took informant with him to one hotel and tried to outrage her modesty by touching her. When she tried to prohibit him, he beaten her and committed sexual intercourse with her. She suffered by the pains and she become unconscious there. She regained consciousness at about 9.30 p.m. and she was dropped to Amina. Thereafter, her maternal aunt told her that she has to continue such prostitution business, otherwise she will not maintain her. She also threatened not to tell that incident to anybody, otherwise she will eliminate her. Therefore, she could not lodge the report. Thereafter, after 4-5 days, one Gorakh Gadekar made phone call to maternal aunt of the victim. She told her that one person is ready to pay Rs.10,000/- and the

informant has to go with him. Thereafter, at about 8 p.m., she went to hotel "Bambu House" on the two wheeler of Gorakh Gadekar. He took her to one Lodge. One Bhushan Pawar (Vakil) was there. He committed rape on her. Due to pains, she suffered. Again he tried to commit rape on her. She refused therefore he assaulted her. In the morning at 5 a.m., she came to the house of Amina by auto-rickshaw. Thereafter Bhushan Pawar committed rape on her for 6-7 times and paid some amount to Amina.

3. Thereafter, continuously Amina forced informant to commit same acts with 5-6 unknown persons.

4. Applicant – Lakhansingh was the Manager of that hotel. He used to search new customers. Raheman Raju Shah used to leave her in that hotel for that prostitution business. Lakhansingh used to commit rape on her without her consent, without using condom. When informant told that fact to Amina, she was abusing and beating her. Meanwhile, informant met with Arbaj Khan. He gave help of assurance to her.

5. On 23.11.2022 at about 1.30 a.m., informant was suffering from stomach pains, therefore, Amina took her to the hospital of one Dr.Chandshah. Thereafter, the maternal aunt of informant took her to the Police Station, Rahata and demanded certificate in order to admit the informant in *Anath Ashram*. That time,

the Police inquired with her and she stated all the incidents occurred with her. That time, a report was lodged on 24.11.2022 and these applicants were arrested.

6. Mr.Shah, the learned advocate for the applicant submitted that co-accused Gorakh Gadekar is released on bail by this Court in Bail Application No.368 of 2023. One of the co-accused is also granted facility of pre-arrest bail. He prayed bail on the ground of parity. He further pointed out the statements of the witnesses particularly their different versions regarding Arbaj Khan who is the friend of informant. He further pointed out the report of medical examination of the informant is that she was having no any injury. He pointed out that the provisions of POCSO Act are not attracting as held by this Court in Bail Application No.368 of 2023. The learned advocate for the applicant submitted that the applicant is behind bar for more than one year, the applicant has roots in the society, she will not flee away from the trial. Being woman, she be released on bail.

7. Mr.Andhale, the learned advocate for the applicant also pointed out the orders granting regular bail and anticipatory bail to the co-accused. He submitted that there is no such medical evidence as alleged by the informant. He submitted that at the most it is consensual sex. The delay caused for lodging report is not explained. He submitted that no specific dates of rape incident are either mentioned in the report and the statement of the informant recorded

under section 164 of the Cr.P.C.. The applicant is falsely implicated in the crime. He lastly prayed for granting bail on the ground of parity.

8. The learned APP and the learned advocate appointed on behalf of respondent no.2 in Bail Application No. 2275 of 2023 and for respondent no.3 in Bail Application No.2374 of 2023 strongly opposed the applications and pointed out the report and statements of the witnesses. They pointed out that applicant Amina is wirepuller of this heinous crime and she forced the informant to commit such heinous acts. She is severally abused. It is lastly prayed to reject the applications.

9. Mr.Shah, the learned advocate for the applicant is relying upon the authority of ***Arnab Manoranjan Goswami V/s State of Maharashtra and others*** reported in ***(2021) 2 SCC 427***, more particularly para 70, in which it is held thus :-

“70. More than four decades ago, in a celebrated judgment in *State of Rajasthan v. Balchand* (1977) 4 SCC 308, Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is “bail, not jail”. The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the

“subordinate judiciary”. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground-in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system’s primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the “solemn expression of the humaneness of the justice system”. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.”

10. Perused the charge-sheet and the orders granting regular bail and anticipatory bail to the co-accused.

11. While granting regular bail, this Court held that role of the co-accused Gorakh Gadekar @ Padekar was limited, to leave the victim at the hotel, and therefore, he was released on bail.

12. As far as, granting of anticipatory bail to the another co-accused is concerned, it was granted because the informant submitted an affidavit that co-accused Bhushan Pawar's (Vakil) name was included in the FIR at the instance of her maternal aunt Amina falsely. Therefore, anticipatory bail was granted to him.

13. In the report, informant has explained as to how the delay caused for lodging the report that Amina aunt was threatening to her and how her mental condition was during that period.

14. Applicant-Amina is the prime accused and she forced and compelled the informant for doing the prostitution business and many times rapes were continued on her for month together. It is very serious illegal overt act on her part. She may pressurise prosecution witnesses, she may compel such innocent girls in such heinous prostitution business in future. Therefore, considering her role she is not entitled for bail.

15. Applicant – Lakhansingh was the Manager of the said Lodge. He took disadvantage of the informant and forcibly committed rape on the victim on many times and that too without use of

condom. He beaten her when she refused for sexual intercourse. When she made complaint about that to Amina, she also abused and beaten her. This shows that there was no consent on the part of the informant which reveals prima facie from the report and her statement.

16. Further only because any woman is doing prostitution business, there can not be permanent consent on her part who wish to have sexual intercourse with her. She has right to refuse to perform sexual intercourse with anybody. Therefore, when there is no consent of the informant as stated by her in the report itself, the applicant Lakhansingh can not be released on bail as there was no such consent.

17. As far as medical evidence is concerned in each and every case medical evidence is not necessary. In Indian culture woman can not make such false allegation of rape and get defame her character and suffer for entire life.

18. Considering all above reasons, the authority of *Arnab Goswami (cited supra)* is not helpful to the applicants to release them on bail as the factual matrix are different in this and that case. Further it was application for anticipatory bail and this application is filed for regular bail thus the parameters are different. Considering the serious nature of the crime, the possibility of pressurizing the

prosecution witnesses on the part of applicants cannot be ruled out if they are released on bail. The applications, therefore, deserve to be rejected. Accordingly, the applications are rejected.

19. Fees of Ms.Sayali Tekale appointed advocate for representing the cause of respondent no.2 in Bail Application No.2275 of 2023 and respondent no.3 in Bail Application No.2374 of 2023 be paid through the High Court Legal Services Sub-Committee, Aurangabad as per rules.

(SANJAY A. DESHMUKH, J.)

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