



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1852 OF 2024

Ankush Pralhad Jadhav,
Age : 39 years, Occu. : Labourer,
R/o. Om Sainagar, Ranjangaon Shen Punji,
Tq. Gangapur, Dist. Chh. Sambhajnagar.

... Applicant

Versus

1. The State of Maharashtra,
Through Officers of Waluj MIDC,
Police Station, Waluj,
Dist. Chh. Sambhajnagar.

2. X.Y.Z.

... Respondents.

WITH

BAIL APPLICATION NO.1931 OF 2024

Shalini Rohidas Waywal,
Age : 35 years, Occu. : Household,
R/o. Omsainagar, Purandare,
Ranjangaon Shenpunji, Tq. Gangapur,
District Aurangabad.
(At present in Jail)

... Applicant
(Accused No.2.)

Versus

1. The State of Maharashtra,
Through Police Station, MIDC,
Waluj, District Aurangabad.

2. X.Y.Z.

... Respondents.

...

Ms. Rashmi S. Kulkarni, Advocate for Applicant in BA/1852/2024

Mr. Sopan G. Bobade, Advocate for Applicant in BA/1931/2024

Mr. P. K. Lakhotiya, APP for Respondent – State

Ms. Shilpa Awchar, Advocate for Respondents No.2 (Appointed)

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 03 JANUARY, 2025
PRONOUNCED ON : 07 JANUARY, 2025

ORDER :

1. These are regular bail applications as a result of arrest of applicants in connection with Crime No. 564 of 2024 registered at Waluj M.I.D.C. Police Station, Dist. Aurangabad for offence punishable under sections 342, 376(1), 376(2)(L), 376(2)(i), 109, 114 of Indian Penal Code r/w sections 4, 5(J)(J), 6, 8, 12, 16 & 17 of Protection of Children From Sexual Offences Act, 2012.

2. Learned counsel for applicant in Bail Application No. 1852 of 2024 submitted that, applicant is arrested in above offences on 17.06.2024 and since then he is behind bars. It is pointed out that, in fact, FIR is lodged on accusations that, since 8 to 10 months prior to the reporting, there was forceful sexual intercourse on the victim. Learned counsel pointed out that, in fact, though victim is 14 years and some months old, she herself went on changing story and version and thereby her such wavering stand itself raises doubt about credibility of her statements. On this count, learned counsel took this court through the statement of victim, resulting into registration of Crime No. 564 of 2024, supplementary statement dated 17.06.2024 and even

the statement given by victim before learned Magistrate under section 164 Cr.P.C. Pointing to the above statement, she vociferously submits that, every time version is changed and new complexion is given to the story rendering her statements unworthy of credence. According to learned counsel, apparently, implication is at the behest of police machinery as victim has been tutored.

3. Learned counsel further pointed out that, though prosecution claims that DNA report is positive, she disputes the findings, on the manner of analysis, deviation from protocol of both, collection and preservation of sample. In support of her submission about credibility of DNA report, she seeks reliance of judgment of this court in the case of ***Nivrutti S/o. Nagorao Hange v. The State of Maharashtra and Anr.***, Criminal Appeal No. 889 of 2023. She pointed out that, here no T.I. parade is conducted. That, now investigation is over and though case is committed, charge is not yet framed. That, applicant is behind bars since long and moreover, he being sole bread earner having children, she prays for relief of bail.

4. Learned counsel for applicant in Bail Application No. 1931 of 2024 also pointed out that, such applicant is very

biological mother of victim. That, she is falsely implicated and moreover at the instance of police machinery. He pointed out that, FIR was initially against unknown person, but at subsequent point of time on supplementary statement, she has been named. He pointed out that, statement of victim under section 164 Cr.P.C. is absolutely silent about role of this applicant. Even, according to him, now investigation is over and charge-sheet is already filed in August 2024. Applicant being a woman and being behind bars and when there is no convincing reasons for continued custody, he prays to grant relief of bail.

5. Opposing above both applications, learned APP pointed out that, victim is a minor barely of 14 years and some months old. That, applicant of Bail Application No.1931 of 2024 is biological mother of victim. Learned APP pointed out that, such applicant and applicant of Bail Application No.1852 of 2024 have relations. He submitted that, victim has reported of she being raped repeatedly and impregnated. That, on account of pain in stomach, when she was examined by medical expert, pregnancy was revealed and that thereafter involvement of applicants came to light and on statement of victim, FIR has been registered. Learned APP pointed out that, DNA samples were gathered and the same has confirmed involvement of applicant of Bail Application

No.1852 of 2024. That, at the instance of very biological mother, such accused committed sexual atrocity on the victim that too repeatedly and therefore with such serious accusations, learned APP seeks rejection of both the applications.

6. Heard both sides at length. Perused the FIR and more particularly, statement of the victim. Victim appears to be 14 years and 7 months old and she has given her date of birth as 05.11.2009. Substance of her statement is that, she studies in 10th standard. She gave statement that, on 06.11.2023, while she was returning from school, in the vicinity of Ranjangaon, she was approached by unknown 28 years boy and after questioning her name and where she was going, he allegedly dragged her to a room and in spite of her resistance, raped her. She claims that, out of fear, she did not report her parents. On 14.06.2024, on account of complaint of pain in abdomen, her mother took her to Ghati Hospital and there her pregnancy was revealed. Supplementary statement of victim seems to be recorded after two days i.e. on 17.06.2024, wherein she reported that, she gave statement on 15.06.2024, but it was deliberately a false information from her side and hence she was giving supplementary statement, naming accused no.1 being introduced by her own mother accused no.2 as her friend i.e. while she was studying in 7th standard. She stated in

supplementary statement that accused no.1 used to visit her house when her father was away for work in the afternoon and both accused nos.1 and 2 used to indulge in physical intimacy in her presence. According to her, such instances took place for three years, but she did not report it to her father. According to her, while she was in 9th standard her own mother accused no.2, four to five times made her forcibly indulge in sex with accused no.1. She also informed in supplementary statement that her statement dated 15.06.2024 was also at the instance of her mother accused no.2.

7. Supplementary statement of victim appears to be recorded before learned J.M.F.C. on 24.06.2024, wherein she has absolved her mother stating that she is not guilty.

8. Though as submitted by learned counsel for applicant accused no.1, victim kept on changing versions, prima facie, in supplementary statement, she has assigned the reasons for giving false information on 17.06.2024. Supplementary statement is in fact detailed one, wherein both above applicants are named. Victim has reported that accused no.1 was friend of her mother accused no.2 and in absence of her father accused no.1 used to visit house and victim herself has stated about her own mother and accused

no.1 getting intimate in front of her. She has also named mother for forcing her to have sexual intercourse with accused no.1 and victim has stated that, this has happened four to five times. Apparently, only on account of abdominal pain, when she was medically examined, her pregnancy came to light and at such point of time, skeleton fell out of the closet. Moreover, DNA report of the new born delivered by minor victim has confirmed accused no.1 to be the biological father. Appreciation of scientific evidence cannot be done at this stage and it falls at the realm of trial.

With such quality of material against both applicants neither of them are entitled for relief of bail as prayed. This court does not find it a fit case to grant relief as prayed. Hence, following order is passed :-

ORDER

- (i) Both applications are rejected.
- (ii) Liberty is granted to file fresh bail applications before Sessions Court, if desired.
- (iii) Fees of learned Advocate, who is appointed to represent cause of respondent no.2 is to be paid by the High Court Legal Services Sub-Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)