



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1968 OF 2024

Avinash Ganesh Zote
Age : 23 years, Occ: Labour,
R/o: Anand Nagar, Rajput Wadi,
Jalna.

... Applicant

Versus

1. The State of Maharashtra
2. X Y Z

... Respondents

**WITH
BAIL APPLICATION NO. 1969 OF 2024**

Sohel Naim Sayyad
Age : 22 years, Occ: Labour,
R/o: In Front of CP College,
Railway Station, Jalna.

... Applicant

Versus

1. The State of Maharashtra
2. X Y Z

... Respondents

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Mr. Sunil B. Surse, Advocate for the Applicants.
Mrs. Vaishali S. Chaudhari, APP for Respondent No.1-State.
Mr. S. V. Suryawanshi, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 20.01.2025
Pronounced on : 22.01.2025

ORDER :

1. Both above regular bail applications are arising out of one and the same crime i.e. Crime No. 0125 of 2024 registered at Vedant Nagar Police Station, Aurangabad City for offence under Sections 137(2), 65(1), 70, 75(1), 3(5) of the Bharatiya Nyaya Sanhita [BNS] and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act].

2. Learned counsel pointed to the FIR and submitted that, girl has habit of leaving house and going missing and then returning back. He pointed out that this is evident from the statement of mother as well as victim. He further submitted that in above crime, which is at the instance of mother, initially no one was named. Subsequently, victim has herself returned back and her statement was also recorded. However, in her own statement dated 01.08.2024, victim reported that she left house as result of quarrel with mother and that there was no untoward incidence. Learned counsel pointed out that subsequently, on the next day, false and afterthought supplementary statement was recorded even wherein, initial allegations are that victim herself left the house in the evening of 29.07.2024 on the

pretext of going to her friend's place, but she went to railway station premises and there, it is alleged that, she came in contact with unknown rickshaw driver who allegedly took her to a lodge and had forcible sexual intercourse. Learned counsel pointed out that subsequently, next day i.e. on 30.07.2024 again the girl reported to be in railway station premises and she has alleged of being approached by both present applicants and assuring job, she was asked to come to Jalna. That, she herself travelled, allegedly met two other girls and again came back to Aurangabad, but according to learned counsel, she did not go home. She has further alleged that in the night of 31.07.2024, both applicants took her to a ground near railway station and had sexual relations with her.

3. Thus, according to learned counsel, in supplementary statement, false story has been reported about both applicants having forceful sexual intercourse on the promise of marriage and on the promise of fixing job. Learned counsel pointed out that all such allegations are raised subsequently and that too, at the instance of parents. Finally, learned counsel submitted that applicants are of young age. Now investigation is already over and both being behind bars since long, learned counsel prays for relief of regular bail.

4. Learned APP put strong objection to both the applications pointing out that apparently, victim is barely 15 years of age. She has been sexually exploited on assurance of job. That, victim has named them in the FIR. That, victim's statement is also recorded under Section 161 as well as Section 164 of Cr.P.C. wherein she has reiterated about being victimized by taking her to lodge. Evidence to that extent has been gathered by investigating machinery. Consequently, according to learned APP, serious offence and sexual atrocity has been committed on a minor, attracting provisions of POCSO Act and resultantly, both applications are sought to be rejected.

5. Learned counsel for victim also strongly opposed on the ground that, serious crime has been committed on the victim, a minor, that too repeatedly. That, both applicants are married and clearly, disadvantage of the girl has been taken. There are repeated forcible sexual relations on issuing threats and hence, he too opposed, as according to him, there is overwhelming evidence and serious crime is committed.

6. After considering the submissions advanced above and on going through the papers, it is emerging from date of birth certificate of the

victim that she was born on 06.03.2009. Initially, there is missing report resulting into registration of offence under Section 137(2) of BNS. Papers show that victim, who was said to be studying in 10th Standard, left the house on 29.07.2024 but did not return. She herself stated in statement dated 01.08.2024 that she had been to Jalna, stayed for two days and had come back and that nobody kidnapped her and also there was no untoward incidence with her and she thereby refused to undergo medical examination.

7. On next day, she has given supplementary statement dated 02.08.2024 and its substance is that, on 29.07.2024, after meeting her friend in the evening, as she was not willing to go home, she went in railway station vicinity. She has reported that she was approached by one unknown rickshaw driver to whom she told that she had left the house and that she wanted to find job and that she did not wish to go home. Said rickshaw driver allegedly took her in a lodge, spent night with her in the same room and she claims that, against her wish, he maintained physical relations with her.

Then she reported that on 30.07.2024 at 7.00 a.m., two persons approached her and she has thereby named present applicants informing her that they lay honey trap on rich people, snap

photographs and blackmail them and that they can share the earnings, but she claims to have refused to do such job. Then she alleges that they assured her job at hospital in Jalna, to which she agreed and she boarded train to Jalna and there, she names two girls who allegedly approached her namely, Manali and Ashwini. She again claims to have come back with them to Aurangabad for their work and while in the railway station vicinity, when she was sitting in the waiting room, present applicants again approached her and asked her to accompany above named girls back to Jalna and they all travelled back there. She claims that till her job was arranged, she was to be kept in a room, but as no room was available she stayed at Soheli's place that night.

She claims that on 31.07.2024, she was sent back to Aurangabad for bringing Aadhaar Card, but as she was not willing to go back, she boarded city bus and went to Waluj Pandharpur, and without taking Aadhaar Card, she went back to Jalna, gave phone call to applicant Soheli from the mobile of one rickshaw driver and from there, again present applicants and their friend Karan took her to a ground and there, after initially outraging her modesty, both present applicants had forcible sexual intercourse with her in spite of her resistance. Even, Karan had also sexual intercourse with her.

On the next day, i.e. 01.08.2024, while she was put in a lodge at Jalna, again applicant Soheli and said Karan took turns in raping her. Applicant Soheli is alleged to have had repeated forcible sexual intercourse with her. Finally, she claims to have used phone of Karan to talk to her mother for Aadhaar card for getting job and hence, her above statement was recorded.

8. Instigating machinery seems to have collected date of birth certificate of the victim which shows that her date of birth to be 06.03.2009. Above instances have taken place with her from 29.07.2024 to 01.08.2024. Therefore, apparently and evidently from the birth certificate, it is clear that victim is minor. Though she left the house on her own and had desire to work, as pointed out, there was exploitation of the minor, that too by several persons, including present applicants, that too, on couple of times. Resultantly, allegations are of serious nature. Taking the same into consideration, submissions made before this Court that, there is false and afterthought implication on supplementary statement, cannot be acknowledged in the light of nature of allegations and statement given by the victim, though at subsequent point of time. This Court, on the strength of above material, does not consider it a fit case for

granting the relief as prayed. Hence, I proceed to pass the following order:

ORDER

Both the applications are dismissed.

[ABHAY S. WAGHWASE, J.]

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