

MHBU010003082023



IN THE COURT OF ADDITIONAL SESSIONS JUDGE, BULDANA

SPECIAL CASE NO. 15 OF 2023

Aakash Bhagwan Gore,
Age-25 years, Occ.Labour,
R/o Gewrai, Tq.Gewrai,
Dist.Beed ... Applicant

..Versus..

State of Maharashtra
Through D.G.P.Buldana,
Through PSO Chikhli ... Non-applicant

ORDER BELOW EXH.5

(Passed on this 6th day of April 2023)

1] Instant bail application which is second one, has been filed by applicant under Section 439 of Criminal Procedure Code for grant of regular bail inter-alia contending that Police Station Officer, Chikhli has registered crime bearing Crime No.52/2023 relating to the offences punishable under Sections 376, 376(2)(f)(i), 354-A, 506 of the Indian Penal Code and Sections 4, 8 and 12 of the POCSO Act. First bail application (bearing No. 57/2023) was rejected by this Court prior to filing of charge-sheet, i.e. on 3rd March 2023.

2] In brief, prosecution has alleged that victim is resident of Chikhli, Tq.Chikhli, Dist.Buldana. At the time of alleged incident, she was

15 years 6 months old. Applicant Aakash is husband of her maternal aunt. Thus, applicant is married person. She further alleged that on 1.9.2022, applicant had proposed her for marriage and asked her to maintain sexual relation with him. She refused for the same. Despite it, applicant used to send messages to her.

3] She further alleged that in the month of October 2022 at about 2.00 to 2.30 p.m., when she was present at her house, at that relevant time, applicant had called her near one college by informing her on phone. She refused for the same. But, he threatened to defame her. Therefore, she had gone to that place. Thereafter, applicant had taken her on his vehicle to one Lodge and he committed sexual intercourse with her forcibly and threatened to kill her. Thereafter, applicant had left her at Chikhli.

4] She furthermore alleged that on 23.1.2023 at about 3.30 p.m., she was coming to Jankidevi Mahavidyalaya, at that relevant time, applicant had come there and made her sit on his vehicle and thereafter again, he insisted her to come to Lodge situated at Buldana. He also threatened to defame her. At that relevant time, by pulling her "Odhani", he pressed her breast. Thereafter, she stepped down from his vehicle and informed him that she would inform about incident to her parents. Thereafter, he left that spot.

5] On the basis of above-referred allegations, she lodged her report to police station, Chikhli on 23.1.2023 against applicant.

Thereafter, crime was registered against applicant for above-mentioned offences. Investigation was started. Applicant was arrested on 27.1.2023.

6] According to applicant, he has not committed any offence. He has stoutly denied all the allegations made against him. He is claiming to be innocent one. Investigation has been already completed and now charge-sheet is already filed in the Court. He is falsely implicated in the matter due to enmity between his real mother-in-law and mother of victim, in order to destroy his marital life. Victim, being under the influence of her mother, has made false allegations. In such situation, he is ready to abide the conditions, in case, regular bail is granted to him. He will not misuse bail, in case, he is released on bail. Lastly, it is implored for allowing his bail application.

7] Learned Counsel of applicant has filed affidavit of wife of applicant who supports to defence of applicant.

8] Learned APP Smt.Sonali Saoji-Deshpande has filed her say vide **Exh.7** and thereby strenuously opposed regular bail application by contending that serious allegations have been made against applicant. Charge-sheet and documents filed with it demonstrate that accused/applicant has been involved in the offence of committing rape on minor victim girl who is his relative (i.e.daughter of real sister of wife of applicant). Medical evidence is supportable to the prosecution case. In such scenario, if applicant is

released on bail, then he will misuse the same and will create hurdle in the progress of trial. There is no change of circumstance and no legal ground to allow the bail application. At last, it is requested for rejecting bail application.

9] Victim has also filed her say vide **Exh.6**. She strongly opposed bail application. She submits that there are every chances of pressurizing her in case, applicant is released on bail. She also submits that he will misuse the same and her life will come in danger. Lastly, it is requested for rejecting his bail application.

10] I have heard learned Counsel Shri Dinode for applicant, learned APP Smt. Saoji-Deshpande and victim on bail application. Learned Counsel of applicant has relied on following judgment-

A] **Sharif Hasan Vs.State through Public Prosecutor & Anr, Criminal Application (Bail) No. 218 of 2017, decided by Hon'ble Bombay High Court on 22.9.2017.**In the said judgment, Hon'ble Court noted that **hymen of victim was found intact**. It was further observed that **accused appears to have been involved in false case**. Having considered peculiar facts and circumstance, Hon'ble High Court released accused on bail. But, such type of facts, circumstance and evidence are not appearing in case in hand. Therefore, said cited judgment is not applicable to case in hand, so as to release applicant on bail, with due respect.

11] The learned Counsel of applicant Shri Dinode submitted that

charge-sheet has been filed in case in hand and investigation has been completed. Due to such change of circumstance, applicant is entitled to file successive bail application and is entitled to regular bail. Learned APP Smt.Saoji-Deshpande strenuously opposed such submission of learned Counsel of applicant and submitted that ample evidence has been annexed with charge-sheet which demonstrates that applicant is involved in such serious crime of committing rape on minor girl. Therefore, applicant is not entitled to bail.

12] No doubt, now charge-sheet has been filed and investigation has been already completed. Now, question arises whether argument of learned Counsel of applicant that filing of charge-sheet amounts to change in circumstance for filing successive bail application is proper one. In this context, it would be expedient to refer here the judgment of Hon'ble Apex Court- **Virupakshappa Gauda Vs. State of Karnataka & another (2017) 5 SCC 406**. Its para No.12 read as under-

“12. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found material, has placed the charge-sheet for trial of the accused persons. As is further demonstrable, the learned trial Judge has remained absolutely oblivious of the fact that the appellants had moved the special leave petition before this Court for grant of bail and the same was not entertained. Be it noted, the second bail application was filed before the

Principal Sessions Judge after filing of the charge-sheet which was challenged in the High Court and that had travelled to this Court. These facts, unfortunately, have not been taken note of by the learned trial Judge. He has been swayed by the observations made in Siddharam Satlingappa Mhetre, specially in para 86, the relevant part of which reads thus: (SCCp.729).

“86.... The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he found guilty by the competent court.”

Para No. 13 read as under-

*“13. The proposition expounded above, has to be accepted, but that has to be applied appositely to the facts of each case. **A bail application cannot be allowed solely or exclusively on the ground that the fundamental principle of criminal jurisprudence is that the accused is presumed to be innocent unless he is found guilty by the competent court.** The leaned trial Judge has also referred to the decision in Sanjay Chandra wherein a two-Judge Bench while dealing with the bail applications, observed thus (SCC p.52, paras 21-23)*

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstance, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstance.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

Thus, from above observation, it is manifest that filing of charge-sheet does not amount to change of circumstances. Above judgment guides us about determining bail application.

13] On perusal of charge-sheet of case in hand, it will find that allegations made against applicant are well founded. The learned Counsel of applicant has submitted that there is inordinate delay in lodging report, if first incident is taken into consideration. No doubt, it might be so. But Court cannot overlook the aspect that

in sexual offences, delay in lodging the report can be due to variety of reasons, particularly, reluctance of victim and her family members to go to police station and complain about incident which concerns the reputation of minor unmarried victim and honour and reputation of the family and particularly when, accused is relative of victim. Generally, it is only after giving it a cool thought, FIR relating to sexual offence is used to be filed. So, in view of this, at present stage, it cannot be inferred that merely there is delay in lodging report, alleged incident is false one.

14] The learned Counsel of applicant has submitted that there is no medical evidence, therefore, alleged incident did not happen. Medical papers show that in history, she narrated fact of incident alleging that applicant has committed rape on her and medical papers further show that **hymen of victim is ruptured**. Needless to say that medical evidence plays important role while determining rape cases. But, in every case, medical evidence is not always necessary for being proved rape cases. Case papers filed with charge-sheet reveal that there are sufficient material and grounds available on record which suggest that applicant is involved in alleged serious crime. In such circumstances, it cannot be stated that applicant is entitled to be released on bail.

15] No doubt, unless charge is proved, accused must be treated as innocent one. But, said sole ground is not enough for releasing applicant on bail. One has to take into consideration the

seriousness of offence and punishment provided to the offences alleged against accused. In present case, minor victim is alleging against applicant (who is already married) about ravishing her. She also alleged in her say that repeatedly he sexually assaulted her. Say of victim further reveals that apprehension has been created in her mind, due to alleged sexual assault committed by him and she did not dare to go to college. In such circumstances, if applicant is released on bail, then possibility cannot be ruled out that he may misuse the same and he will pressurize her. As such, possibility of creating hurdle during course of trial cannot be ruled out from the side of applicant, in case, he is released on bail.

16] For above-stated all reasons, I am not inclined to grant bail to the applicant. As such, bail application is liable to be rejected. In the result, following order is passed.

ORDER

Bail application (Exh.5) is rejected.

Buldana
Date:6.4.2023

(R.N.Mehare)
Addl.Sessions Judge,
Buldana