

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.22

(Passed on this 1st day of June 2023)

1] Instant bail application which is third 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. Second bail application was rejected on 6.4.2023.

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 charge-sheet has been 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 Public Prosecutor Shri Bhatkar has filed her say vide **Exh.25** 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.

8] Victim has also filed her say vide **Exh.24**. 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.

9] I have heard learned Counsel Shri Dinode for applicant, learned Public Prosecutor Shri Bhatkar and for victim on bail application.

10] In case in hand, on perusal of record, it will find that accused Akash Gore has been arrested on 27.1.2023. Today the date is running 1.6.2023. As such, since five months, accused is in jail. There is also no dispute regarding fact that investigation has been completed and charge-sheet has been filed. Accused is resident of Beed and victim is resident of Chikhli, Dist.Buldana. Therefore, there are least chances of their contact.

11] The learned Counsel of accused has filed some photographs on record. These photographs show that accused and victim have drawn their photographs jointly together. The learned Counsel of accused has filed the xerox copy of the letter allegedly written by victim. Recitals of such letter reveal that there appears to be love affair between them and victim appears to be maintaining living in relation. Letter further reveals

that further she cannot continue the said relation, because applicant was maintaining relation with his wife. From these material, it appears that intimacy was developed between applicant and victim.

12] The learned Counsel of applicant has pointed out the statement of one Amar Kishor Katkar, a Hotel Manager, where applicant and victim had stayed. He noted that victim had come along with applicant and stayed in the room of their hotel for certain time period and when they left their hotel, he did not notice any abnormal situation in the behaviour of victim or on her face. The learned Counsel of applicant has argued that had applicant applied force or misrepresented her in any manner, then in that situation, victim could have informed to her relatives on mobile. But, it did not happen. He further argued that in such circumstance, conduct of victim is not found to be reliable one. In this context, the learned Counsel relied on the judgment of **Praveen Bhagwan Gaikwad Vs. State of Maharashtra & Anr, Criminal Application (BA) No. 307 of 2022, decided by Hon'ble High Court on 27.6.2022.** In cited judgment, dispute relating to Sections 363,376,376(3), 376-D read with Section 34 of IPC. Applicant had applied for bail under Section 439 of Cr.P.C. Its para No.7 & 9 are reproduced as under-

“7. The statement of the victim dated 11.12.2021 shows that after having dinner along with the accused persons, she went to her room in the hotel and she was alone there for long time. Her statement further shows that she had a talk with her friend, which shows that the victim was having mobile phone with her. Thus, in normal case, the victim ought to have called her parents

making complaint against the accused person. However, she remained silent and later on lodged the complaint.

9. Thus, in view of the fact that the investigation is over and further custody of the applicant is not necessary. I am of the opinion that the applicant is entitled for grant of bail.....”

As such, in given set of facts and circumstances, said judgment appears to be helpful to applicant Aakash for being secured bail.

13] For above-stated reasons, when investigation has been completed and charge-sheet has been already filed and particularly when near about five months period has been spent by applicant in jail, then no purpose will be served by detaining him in the jail for further period.

14] No doubt, prior to this, bail application was rejected by this Court. But, thereafter, two months period has been already elapsed. In this context, the learned Counsel of accused has placed his reliance on the judgment reported in **Laxman Irappa Hatti & Suresh Vs. The State of Maharashtra, 2004 Cri.L.J. 3802**. Its relevant para No.8 is reproduced as under-

“8. The law is now well settled that an order refusing an application for bail does not necessarily preclude another on a later occasion giving more material, further developments and different considerations. While the Court should set store by the circumstance that the bail application was once rejected and it cannot be said that the Court is barred from second consideration at a later stage. The Apex Court has taken such view in Babu Singh and Ors Vs. State of U.P. In yet another judgment, the Apex Court in Dilip Shankar Koli and Ors Vs. State of Maharashtra, 1981 Cri.L.J. 500 held that, “ there is no scientific formula in the matter for reconsideration of application for bail nor are there any rigid consideration as such. There is no uniform test which alone can govern matters of bail. Indeed, a matter of bail is

one where the position will always depend on the facts and circumstances of each case. Indeed, in the very same proceedings, circumstances can go on changing one way or the other and there can be no dispute that the bail once refused can be later on given, nor any dispute that bail even if given can be subsequently cancelled.”

In such situation, in case in hand, even though earlier bail application has been rejected, that does not mean that subsequently, at proper stage, bail cannot be granted.

15] In above-described circumstance, if regular bail is granted to the applicant by imposing stringent conditions, then it may not prejudice to the prosecution case. As such, according to me, applicant is entitled to bail. In the result, following order is passed.

ORDER

- 1] Bail application (Exh.22) is allowed.
- 2] Applicant Aakash Bhagwan Gore be released on execution of P.R. Bond of Rs.30,000/- with one surety in like amount, in Crime No. 52/2023 registered with Police Station, Chikhli 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 on following conditions;
 - A] Applicant shall not misuse the bail.
 - B] He shall not create any hurdle in the progress of trial.

Buldana
Date:1.6.2023

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