

MHKO080005092024



Order below Exh. 3 in Session Cse No.20/2024

01. The present bail application is moved by accused Rahul Netaji Musale who is facing charge under section 376, 323, 506 r.w. 34 of I.P.C in connection with C.R.No.352/2024 registered with Gadhinglaj police station on 5/6/2024. This is second bail application after registration of the crime and the first bail application after filing of the chargesheet.

02. The case of the prosecution is that, the first informant/complainant is residing along with her family at Bazar Peth, Nesari, Tq-Gadhinglaj and was doing business of beauty parlor at Gadhinglaj. She used to reside in a rented premises at Gadhinglaj in connection with her beauty parlor business. She acquainted with the accused No.1 Shridhar Arjun Shingate, r/o: Inchnal and she had friendly relation with him. The accused No.1 was in the Jail, therefore, she was not having any contact with him. But, when he was released from the jail, he chased her and demanded physical relationship with her and threatened to kidnap her. Hence, she lodged FIR against him with Gadhinglaj Police Station, but the accused No.1 released on bail in that crime.

03. It has further contended that, on 5/6/2024, while the first informant was drying chilies on the terrace of her rented premises, the accused No.1 came there along with the present applicant/accused on a motorcycle and went on the terrace. The present applicant/accused was waiting outside the said building and kept watch there. The accused No.1 has committed rape on her in a store room adjoining to the said terrace. Therefore, on the same day, the first informant lodged the FIR with Gadhinglaj Police Station against both the accused.

04. It is mentioned in the application that, the present applicant/accused No.2 was arrested on the same day by the Police and was produced before the Ld. Magistrate for remand on next day i.e. on 6/6/2024 and since then he is in Judicial Custody.

05. It is stated in the application that, the police have completed the investigation and filed chargesheet in the Court. Therefore, there is no necessity to keep the accused behind the bar, as further incarnation in the jail of the present applicant/accused No.2 is not necessary. He is local resident and has roots in the society. His family has landed properties at Mouje Inchnal, Tq-Gadhinglaj. The applicant/accused No.2 is ready to abide the conditions that may be laid down by this Court. Hence, prayed to allow the application.

06. The application is strongly opposed by the State by filing say at Exh.4 and stated that the present applicant/accused No.2 has played active role in the commission of crime, as he was keeping watch at the ground floor of the said building, where the absconding accused Shridhar Arjun Shingate committed the rape on the victim and after the crime the accused No.1 fled away from the spot of crime with the help of the present applicant/accused on his motorcycle and since then, the accused No.1 Shridhar Shingate is absconding and even after filing of the chargesheet he is not available for the Police for further investigation. Hence, it is submitted that, the present applicant/accused No.2 may pressurize the victim, if he release on bail. There is threat to her life and hence, prayed to reject the application.

07. Heard both parties. The Ld. Counsel Shri. S. S. Nikam for applicant/accused No.2 submitted that, the applicant/accused No.2 is unaware about the alleged crime committed by the accused No.1 and his role is just to carry the accused No.1 on his motorcycle as a pillion rider to and from the spot of crime. He also submitted that the antecedents of the applicant/accused No.2 are clean . He has not committed any offence much alleged in the present chargesheet. Therefore, he submitted to allow the bail application.

08. On the other hand, the Ld. A.P. P. Shri. D. L. More strongly opposed the bail application contending that, the earlier bail application before filing of the chargesheet is rejected by its order dated 16/6/2024 in Cri.Bail Appln.No.60/2024. The role of the present applicant/accused No.2 is already reflected in the FIR and the investigation is carried out by the Police and the role of present applicant/accused No.2 is confirmed in the instigation and therefore, the chargesheet came to be filed against the present applicant/accused No.2 along with the accused No.1. He also pointed out that, this Court has already rejected the anticipatory bail application moved by the accused No.1. The second anticipatory bail application moved by the accused No.1 is also dismissed as withdrawn by the Hon'ble Bombay High Court on 20/8/2024 in Anticipatory Bail Application No. 2127/2024. Therefore, he submitted that, the crime has been committed by both the accused in furtherance of their common intention. The present applicant/accused No.2 was well aware about the commission of the crime and even then, he deliberately helped the accused No.1 in the crime. Therefore, he submitted that, the bail application may be rejected.

09. The victim is present in the Court and submitted the affidavit and prayed that, her elder son Prince is taking education at Kolhapur and the younger son is residing with her at Nesari. If the present applicant/accused is released on bail,

there is threat to her life. She has mentioned the commission of the crime at the hands of the accused No.1 and the role of present applicant/accused No.2 in her affidavit and submitted to reject the bail application.

10. I have carefully gone through the chargesheet. The role attributed to the applicant/accused that, he has taken the accused No.1 on his motorcycle to the house of the victim and was stayed at the ground floor when the accused No.1 went on the upper floor of the building, where the victim was staying. The prosecution has alleged that, the accused No.1 has committed rape on the victim on a store room in the terrace of the said building and thereafter he left the spot on the motorcycle which was ridden by the present applicant/accused.

11. It is matter of record that, the accused No.1 is still absconding, his anticipatory bail application was rejected by this Court as well as his another anticipatory bail application moved to the Hon'ble Bombay High Court is also dismissed, as withdrawn. The accused No.1 is still absconding. However, considering the fact that, the role played by the present applicant/accused No.2 that he only took the accused No.1 on his motorcycle as a pillion rider to the spot of crime and thereafter again they both travelled back on the said motorcycle. So far as the intention on the part of the present applicant/accused to aid the accused No.1 in commission of the

crime, it is a matter of evidence and the trial for the purpose of bail application, the above incriminating material is insufficient to reject the bail application. Absconding of accused No.1, cannot be a ground to reject the bail application of the present applicant/accused No.2. So far as the apprehension to the victim is concerned, that may be taken care of by imposing necessary conditions on the applicant/accused No.2. Hence, the bail application needs to be allowed with certain conditions.

ORDER

1. Application at Exh. 3 for bail is allowed.
2. Accused/accused No.2 Rahul Netaji Musale shall be released on bail in connection with C.R. No.352/2024 registered for the offences punishable under Section 376, 323,506 r.w. 34 of Indian Penal Code at Gadhinglaj police station, District Kolhapur be released on bail on his executing personal recognizance bond of Rs.2,00,000/- (Rs. Two Lacs only) with solvent surety in the like amount, subject to following conditions.
 - a. The applicant/accused No.2 shall attend the trial without any excuse.
 - b. The applicant/accused No.2 shall not tamper the prosecution evidence in any manner.
 - c. The applicant/accused No.2 shall not make any inducement, threat or promise to the first informant or any of the prosecution witnesses.
 - d. The applicant/accused No.2 shall not enter the Kolhapur district till arrest of the accused No.1 and

filing of chargesheet by the Police against him, except to attend the trial in the Court.

- e. The applicant/accused No.2 shall co-operate the investigating machinery as and when required.
 - f. The applicant/accused No.2 shall tender his address outside the Kolhapur. So also, he shall tender his mobile number and Aadhar Card. He shall also submit mobile numbers of two neighbours/relatives .
3. Inform Jail authority accordingly.

Gadhinglaj.
Date : 27/8/2024

(M.A.Shinde)
Addl. Sessions Judge,
Gadhinglaj.