

MHNS070024152024



S.C. No.221 of 2024

The State of Maharashtra

Vs

Balu Popat Waje

**ORDER BELOW Exh.2**  
**(Passed on 03/12/2024)**

1. This second application for bail is filed under Section 483 of the Bhartiya Nagrik Suraksha Sahinta, 2023, on behalf of accused who is charge-sheeted in connection with C.R. No.281 of 2024 registered at Nandgaon Police Station, Tal. Nandgaon for the offence p/u/s 64(2)(f)(i)(k)(m) of the Bhartiya Naya Sahita, 2023.

2. Ld. APP strongly opposed the application by filing written say of I.O. at Exh.4.

3. Notice of the application was also issued to the informant. She and victim appeared before the Court and opposed the bail application.

4. Heard, Shri. L.G. Surse, Ld. advocate for the accused and Shri. S. K. Sonawane, Ld. APP for the State. Both argued vehemently. Also heard the informant and victim.

5. Ld. Advocate for the accused submitted as under :-

The accused is arrested on 08/07/2024 and he is remanded in MCR on 09/07/2024. As per the contents of FIR the alleged incident took place on 03/07/2024. The victim is 30 years old. Agricultural lands of accused and informant are adjacent to each other and they are residing in same locality, therefore quarrels used to take place between them. During rainy season there was quarrel between the accused and the informant, therefore the informant was annoyed and she has falsely implicated the accused. There is six days delay in lodging the report. The investigation is complete and charge-sheet is filed and it is committed to this Court for the trial. Criminal Bail Application No.

932/2024 filed on behalf of accused is rejected by this Court vide order dated 17/10/2024. Age old parents, brother and sister in law are dependent on the income of the applicant-accused. No purpose would be served in keeping the accused behind the bars. He has no criminal antecedents. He is having permanent residence. He will not pressurize the witnesses. He will co-operate with the I.O. for further investigation, if any. He is ready to abide all terms and conditions of bail. Therefore, regular bail be granted to the accused.

6. On the other hand Ld. APP for the State and informant and victim submitted as under:-

There is prima facie material and evidence to show that the accused has committed sexual intercourse with the victim who is blind and cousin sister of the accused. The victim is mentally retarded person. The accused took the disadvantage of this fact and committed sexual intercourse with her. The accused is resident of same village and he resides adjacent to the house of the informant. Therefore if bail is granted, there is every possibility that the accused will pressurize the informant, victim and witnesses. Further, he may commit similar kind of offence or more serious offence with the victim. Therefore, the application should be rejected.

7. From the copy of charge-sheet and FIR, say of the I.O. and police papers submitted with charge-sheet, prima facie it can be said that C.R. No.281/2024 is registered against accused at Nandgaon Police Station for the offence p/u/s 64(2)(k) of the Bhartiya Naya Sahita, 2023. In the FIR it is stated that the victim is the daughter of informant and she is 28 years old and she is blind and mentally ill and she is the cousin sister of accused. In the FIR it is alleged that on 03/07/2024 there was program of dinner, therefore the informant and her husband had gone for it, at that time the husband of the informant told her that the accused used to meet the victim when no other person is in the house, therefore she should keep watch on him. It is further alleged that

at 08.00 p.m. the husband of informant went for the program of Waghya Murali, at that time the informant was in the house and the victim was sleeping on 'Godhadi' in the premises in front of the house, at that time at about 09.00 p.m. the accused came and taking disadvantage of blindness and mentally illness of victim hold her hand and pushed her on wooden cot and committed sexual intercourse with her after removing her pant and his own pant. It is further alleged that this act was seen by the informant and she beat the accused by means wooden log, at that time accused ran away. It is further alleged that informant shouted therefore her son came there and she disclosed him about the act committed by the accused. However, despite searching the accused he did not find and thereafter they went at the house of son-in-law at village Devthan Tal. Akola and thereafter they lodged report at Nandgaon Police Station. From the contents of FIR it seems that the said report is recorded in presence of husband of the informant and Lady Social Worker.

8. In the present case, it is to be noted that the victim is partly blind and mentally ill/retarded girl. Further, it is to be noted that the accused is her cousin brother. As per the contents of FIR and the statements of witnesses prima facie it can be said that the informant is an eye witness to the alleged sexual act committed by the accused with the victim. The offence is of rape and it is serious offence. It is against the partial blind and mentally ill/retarded girl. Earlier bail application of accused is rejected on merits. At that time charge-sheet was filed however, the case was not committed to the Sessions Court.

9. In the present case statement of victim prima facie shows that the accused has multiple times committed sexual intercourse with her. It is to be noted that the victim is blind and mentally ill/retarded girl and cousin sister of the accused. Though there is delay in lodging the report from the contents of FIR and the statements of the victim and witnesses prima facie it can be said that the accused has committed the

alleged offences. Considering the nature of offence and allegations against accused and contents of FIR and statements of the witnesses and the police papers prima facie it can be said that there is sufficient material and evidence against accused showing his involvement in committing the alleged offences. Considering the relationship between the accused and victim and informant, it can be said that if bail is granted to the accused there is every possibility that he will pressurize the informant, victim and witnesses. Further, there is possibility of his absconding. In short, it can be said that this is not a fit case to grant regular bail to the accused. As such the application is to be rejected. Hence, I pass the following order.

**ORDER**

1. The application (Exh.2) is rejected.
2. Inform accordingly, to the D.G.P./PP and Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the accused.)

Date- 03/12/2024.  
Malegaon.

( K. R. Patil )  
Addl. Sessions Judge, Malegaon.  
Dist. Nashik.