

ORDER BELOW EXH. 4 IN SPECIAL CASE NO 62/2022.

Vivek @ Vivekanand (Viki) Maruti Dhekane
Vs.
The State of Maharashtra
CNR NO: MHOS-01002027-2022

(Anandnagar Police station Osmanabad Cr. No.143/2022)
(ORDER BELOW EXH.1)

- 1] After filing the charge-sheet, accused/applicant has filed this bail application, under section 439 of Cr.P.C for regular bail, in Crime No. 143/2022 registered with Anandnagar Police Station, Osmanabad, for the offence punishable under sections 376(2)(n), 506, 109 of IPC and under Section 3(1)(W) Of Prevention of Atrocity Act.
- 2] Prior to filing charge-sheet, his first bail application No. 252/2022 for regular bail came to be rejected on merit by my predecessor, vide order dated 23/6/2022.
- 3] Now, this bail application came to be filed on merit as well as on the ground of change in circumstances i.e. filing charge-sheet before this Court.
- 4] Prosecution has filed its say vide Exh. 6 and opposed application. It is contended that, the offence is serious. If he is released on bail, he will pressurize prosecution witnesses and tamper with the evidence as the some witnesses are workers of accused/applicant. There is possibility to flee away from the

jurisdiction of this court, if he released on bail. Hence, prayed to reject the application.

5] Heard advocates of both sides.

6] In short it is the case of the prosecution that, accused/applicant is running the hotel namely 'Mahalaxami Idligraha' in Osmanabad City. Prosecutrix was working as a labour in that hotel. On 17/3/2022 the prosecutrix was washing the pots behind the hotel. At that time, accused/applicant came near her and caught hold her waist from back side. He asked her, to come at his house as his mother called her for receiving wheat. On that day, at about 1:30 p.m. she had gone with accused/applicant on his motor-cycle to his house. His mother, asked her to weight him the kitchen and she had gone the terress of the house by putting the latch to the door form outside. Then applicant/accused came there and took her in the bed room. He has committed rape on her without her consent. He has also given a threat not a disclosed the incident, otherwise he will commit suicide by taking her name. After half an hour his mother came in the house and gave wheat to the prosecutrix. She has left the house and since then, not came in the hotel for work. The applicant/accused and her mother were insisted to attend the work. They also made phone call to her husband and asked him, to send the prosecutrix on the work. But she has not came for work.

7] Prior to one month of the F.I.R., mother of applicant/accused came to her house at about 10:30a.m. and instigated to left her husband and go away with applicant/accused as he will maintain her and her children also. As per said instigation, she alongwith her three children and mother of applicant/accused came near Terna College in Auto-rickshaw. After some time, applicant/accused came with white colour car and took the prosecutrix and her children and went towards Barshi. They were stayed in the rented premises at Barshi. During such stay at Barshi, he has committed rape on her at many times. After two to three days, the mother of applicant/accused made phone call to them and stated that the husband of prosecutrix had lodged complaint at police station against them. On that day, the maternal uncle of applicant/accused came at Barshi and took away him by keeping the prosecutrix and her children at Barshi. Thereafter, she had gone at Kurudwadi to the house of her sister- Sakharbai and narrated the incident. They gave courage to her, and thereby she had filed F.I.R. against the applicant/accused and his mother.

8] After perusal of FIR and investigation papers, it appears that, applicant/accused is arrested for the offence punishable u/s 376(2) (n), 506, 109 of the IPC and under Section 3(2)(W) Of Prevention of Atrocity Act. The offence under Section 376(2) (n) of IPC is serious and triable by the Court of Session. The punishment rigorous imprisonment for a

term which shall not be less than seven years but which may extend to the imprisonment for life, is provided to said offence.

9] F.I.R. and investigation papers shows that prosecutrix was working as a labourer in the hotel of accused/applicant. The allegations of rape are in respect of two instances. Out of it, first instance was on 17/3/2022 in the house of accused/applicant and second instance when they were stayed at Barshi on rental basis.

10] In respect of first instance i.e. on 17/3/2022 she had gone to the house of accused to receive the wheat as per the instruction of his mother. According to prosecutrix, the mother of applicant/accused asked her to sit in the kitchen and she went on the terrace to fetch the water by putting the latch from outside the door. During such period, applicant/accused took her in the bed room and committed rape. However, there are contradiction in the F.I.R. and supplementary statements of prosecutrix in respect of that incidents. There is also one more doubtful circumstance as after such incident, mother came-down from the terrace, but she did not disclose the incident to any one. On the contrary, prosecutrix has received wheat from the mother of applicant/accused and left the house.

11] In respect of second instance i.e. while stay in the Barshi, it appears that, prosecutrix was consenting party for sexual relations. Because, she has left the house of her husband

with three children and went alongwith the applicant/accused at Barshi. They were acquired rental room by showing themselves as a husband and wife. They were stayed there as husband and wife. Her three children were also stayed with them in rental room. None of them have any grievance for such stay. Thereafter, her husband was lodged complaint against them. Then the maternal uncle of applicant/accused went at Barshi and brought the applicant/accused by leaving the prosecutrix and her three children at such place. These instances are clearly shows that, she was consenting party for such sexual relations. Whereas, F.I.R. came to be lodged against applicant/accused after he has left them at Barshi and went with maternal uncle.

12] It further appears that, prosecutrix is 32 years old and mother of three children. She knows the consequences of physical relations after marriage. Inspite of that, she has joined the company of applicant/accused by her own accord and consented for physical relations. Therefore, the ingredients of Section 376 and 376(2)(n) of IPC are prima-facily are not attracted against applicant/accused.

13] F.I.R. came to be registered on 25/5/2022. Applicant/accused has arrested on 30/5/2022 and was in police custody upto 3/6/2022. Spot panchanama has been prepared. Statement of witnesses came to be recorded. The medical examination have been conducted. Substantial investigation has

been completed. Therefore, his further detention in the jail is not required.

14] Applicant/accused is resident of Osmanabad. There is no possibility for giving threat and for causing injury to her, if he released on bail. There is also no possibility to tamper with the prosecution evidence and witnesses or flee away from the justice.

15] It is well settled principle of law that, 'the bail is rule and jail an exception'. The bail should not be refused as a matter of punishment. The accused is presumed innocent till he is found guilty.

16] In the conclude, applicant/accused is entitled to release on regular bail with certain terms and conditions. Hence, the order-

ORDER

1] Applicant/accused **Vivek @ Vivekanand (Viki) Maruti Dhekane** arrested in connection with Cr. No. 143/2022 of Anand Nagar Police station, Osmanabad, is released on bail after executing P.R. bond of Rs. 25,000/- and solvent surety of like amount, on following condition.

- A] He shall not tamper with the prosecution evidence in any manner.
- B] He shall not to intimidate the prosecutrix or prosecution witnesses in any manner.
- C] He shall not enter into the are of prosecutrix or shall not contact with her during pendency of the trial.

Date : 20/09/2022.

(V. G. Mohite)
Additional Sessions Judge
Osmanabad.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order/Judgment are same word to word as per the original Order/Judgment.

Name of Stenographer	- S.G.Bansode (Grade-I)
Court	- Addl. Sessions Judge, Osmanabad.
Date of order/Judgment	- 20.09.2022
Date of order/judgment signed by presiding officer.	- 20.09.2022
Judgment/Order uploaded on	- 20.09.2022