

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3096 OF 2015

Bhushan Supdu Koli & Anr.

.... APPLICANTS

V E R S U S

The State of Maharashtra & Ors.

.... RESPONDENTS

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Mr. Pravin Chavan h/f Mr. A.R.Syed,
Advocate for Applicants.

Mr. V.H.Dighe, A.P.P. for Resp. – State.

Mr. Girish Nagori, Advocate for first informant.

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CORAM : V.M.DESHPANDE, J.

DATE : 7th JULY, 2015

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PER COURT :

1. This is an application for grant of anticipatory bail since the applicants are apprehending their arrest in connection with Crime No. 75/2015 registered with City police station, Jalgaon, District Jalgaon for the offences punishable u/s 376 (2) (m), 420, 323, 504, 506 read with 34 of the Indian Penal Code.

2. Heard Mr. Pravin Chavan holding for Mr. A.R.Syed, learned counsel for the applicants and Mr.

V.H.Dighe, learned A.P.P. for respondent – State.

3. Learned counsel for the applicants submitted that the present prosecution is nothing but a concocted story of the prosecutrix. He further submitted that even after reading the F.I.R., it is clear that it is clear-cut consent of the major girl to have sexual relations amongst the applicant No. 1. He submitted one of the reported cases reported in **2013 ALL M.R. [Criminal] 3721, Kaini Rajan Vs. State of Kerala** and would submit that the present applicant No. 1 who is Govt. servant, needs to be protected by exercising discretion in his favour u/s 448 of the Code of Criminal Procedure.

4. F.I.R. would reveal that the prosecutrix, who is also lady police constable is sexually exploited by the applicant No. 1, who is Police Sub Inspector. The prosecutrix is major. According to F.I.R., on the pretext that the applicant No. 1 will marry with the prosecutrix, he had established sexual relations with her and had exploited her accordingly. If the F.I.R. is scanned properly, it is clear that right from beginning it was well within the knowledge of the applicant No. 1 that he is not going to marry with the prosecutrix. It is also corroborated from the fact that both applicant No. 1 and prosecutrix belong to different caste. In spite of the fact that applicant No. 1 was knowing that ultimately he is not to marry with the prosecutrix, on giving the promises to her, he has sexually exploited her. Thus, this fact clearly established the *mens-ria* on the part of applicant No. 1, who is a responsible police officer. F.I.R. shows that every time the prosecutrix has

objected to get ravish at the hands of applicant No. 1. However, every time, according to the F.I.R., applicant No. 1 has over-powered her both physically and mentally. Mental- state plays important role in as much as when a superior officer is committing such heinous offence like present one against his/her sub-ordinate.

F.I.R. is a tale of the helpless sub-ordinate who was ultimately required to fulfill the lust of her superior. F.I.R. has given detailed account as to when and how the present applicant No. 1 has exploited the prosecutrix at various places. F.I.R. would reveal that the places at which the prosecutrix was sexually assaulted is not restricted to one place, however it appears that she was taken at different places in different hotels and the rooms were booked in their name.

5. At this stage, *prima facie*, it appears that the prosecutrix has given reasonable explanation in respect of delay which is caused in filing the F.I.R. Of-course, prosecution will be at liberty to explain the same in detail at the appropriate stage during the trial. However, there appears *prima facie* explanation about the delay. In that view of the matter, the submission of the learned counsel for the applicant about the delay can not be accepted.

6. The submission of the learned counsel for the applicants that the custodial presence of applicant No. 1 is not warranted, can not be appreciated at this stage, especially when the position which the present applicant No. 1 is

holding. He is a police officer. Therefore, the apprehension on the part of the prosecution that applicant No. 1 may tamper with the prosecution case, which is at very primary stage, can not be said to be ill-founded. Further, the custody of applicant No. 1 is necessary in as much as the prosecutrix has given detail account about their stay. In that view of the matter, presence of applicant No. 1 with the Investigating Officer is absolutely necessary.

7. In so far as applicant no. 2 is concerned, from the F.I.R. it is clear that at any point of time he was not the part and/or accomplice of the applicant No. 1 at the time when the prosecutrix was sexually assaulted. The only allegation against applicant No. 2 is that he has deleted the text of short message service i.e. SMS. Except this, there are no allegation found whatsoever against applicant No. 2. In that view of the matter, custodial presence of applicant No. 2 is not essential and the discretion can be exercised in his favour. That leads me to pass the following order.

(i) Present Criminal Application of applicant No. 1 Bhushan Supdu Koli is hereby rejected. Interim order granted in his favour on 19/06/2015 stands vacated.

(ii) Present Criminal Application of applicant No. 2 Deepak Supdu Koli is hereby allowed.

In the event of arrest in connection with Crime No. 75/2015 registered with

City police station, Jalgaon, District Jalgaon for the offences punishable u/s 376 (2) (m), 420, 323, 504, 506 read with 34 of the Indian Penal Code, applicant No. 2 Deepak Supdu Koli be released on anticipatory bail on he executing P.R. Bond of Rs. 5,000/- [Rupees Five Thousand] with one solvent surety of like amount.

- (iii) With these observations, Present Criminal Application is disposed of.

[V.M.DESHPANDE, J.]