

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

CRIMINAL APPLICATION NO. 5512 OF 2015

Shaikh Abdu Rauf
@ Janab s/o Abdul Gaffar,
R/o. Kagji Drawaza, Beed,
Tq. & Dist. Beed.

...Applicant

versus

The State of Maharashtra.

...Respondent

WITH

CRIMINAL APPLICATION NO. 5767 OF 2015

IN

CRIMINAL APPLICATION NO. 5512 OF 2015

Iffat Afrin d/o Sarwarkhan Pathan
R/o. Near Devashish Petrol Pump,
Gangakhed Road, Parbhani,
Tq. & Dist. Parbhani.

...Applicant

versus

The State of Maharashtra & anr.

...Respondents

...

Mr. Sayyed Tauseef Yaseen, Advocate for applicant
Mr. R.B. Bagul, Addl. Public Prosecutor for respondent/State
Mr. A.A. Shelke, Advocate h/f Mr. P.D. Suryawanshi, Advocate for the
complainant to assist A.P.P.

...

CORAM : N.W. SAMBRE, J.

DATE : 20th OCTOBER, 2015

ORAL ORDER :

Criminal Application No. 5767 of 2015 to assist the
prosecution is allowed.

2. The applicant herein is seeking pre-arrest bail in Crime No. 119/2015 registered on 16/06/2015 at Kotwali Police Station, District Parbhani for an offence punishable under Sections 376, 406, 420 read with Section 34 of the Indian Penal Code, for the incident which took place in between 17/08/2014 to 19/04/2015.

3. It is the case of the applicant that the delay caused in filing the F.I.R. is not explained. The applicant submits that he is brother of husband of complainant and was falsely implicated in the crime in question. According to him, he is ready and willing to co-operate with the investigation and so as to substantiate his case, he has volunteered before this Court that he is ready to go for D.N.A. test and shall extend all co-operation to that effect with the investigating agency. According to him, perusal of the F.I.R., it depicts improbable story. According to him, the applicant, his brother-husband of complainant and his father i.e. father in law of the complainant are falsely implicated in the crime of which except the applicant, both are released on regular bail. He would then urge that boy who is born to the complainant, paternity i.e brother of applicant is already admitted by the complainant and in view of pendency of matrimonial proceedings before the competent Court including the proceedings under the provisions of Protection of Women from

Domestic Violence Act, the false implication can not be ruled out. According to him, it will be appropriate in the circumstances to order the release of the applicant on bail.

4. Learned A.P.P. while opposing the bail application would urge that the allegations against the applicant are serious in nature which are punishable for more than 7 years. In addition to above, he would urge that looking to the nature of allegations against the applicant, it will be appropriate and in the fitness of things to reject the application for grant of pre-arrest bail.

5. Learned A.P.P. has invited my attention to the contents of the investigation papers and submits that for the boy who was born to the complainant, with the consent of complainant, D.N.A. identification test has already commenced. It is further required to be noted that the allegations of criminal breach of trust are made against father of applicant and stated that for executing marriage of the complainant with that of brother of applicant, amount was extorted from the complainant and her father.

6. Upon perusal of the investigation papers but for wild allegations of commission of crime under Section 376 of the Indian Penal Code, there are no other attribution against the applicant

herein. Apart from above, the fact remains that the applicant has shown his willingness to go for D.N.A. test in case investigating agency so desire so as to establish paternity of the applicant with that boy.

7. Apart from above, it is required to be noted that perusal of F.I.R. depicts that the allegations against the applicant for commission of crime of rape in 2014 and the complainant has not narrated any reason for delayed complaint to investigating agency. Apart from above, the fact remains that other allegations against father and brother of applicant which were formed to be basis for registration of crime were also said to be of January 2015 for which F.I.R. came to be lodged on 16/06/2015, for which also there is no explanation on record.

8. In the above referred back, false implication of the applicant in crime in question and probability of story narrated by the complainant itself in the F.I.R. creates serious doubt.

9. In view thereof, it will be appropriate, in my opinion, to order the release of the applicant on bail. Hence, I pass following order.

10. In the event of arrest, the applicant be released on bail, upon executing the P.R. bond of Rs.15,000/- (Rs. Fifteen thousand) with one surety in the like amount, in connection with Crime No. 119/2015 registered at Kotwali Police Station, District Parbhani for an offence punishable under Sections 376, 406, 420 read with Section 34 of the Indian Penal Code

11. The application stands allowed.

[N.W. SAMBRE, J.]