

On 07/07/2015 Jagannath Gunaji Kadam lodged report in which he alleged that on 04/07/2015 in the night after 9.30 p.m. his wife who is mentally retarded had been to answer nature's call. She returned after 1 – 1 ½ hours. Complainant noticed that clothes on the person of his wife were in torn condition and on

being questioned she disclosed that one Anya assaulted her with kicks and fists and forcibly committed sexual intercourse with her.

3. On the basis of the report above said crime came to be registered against the applicant. Prosecutrix and applicant were referred for medical examination. It can be seen from medical certificates that no injuries were found on the person of victim and applicant. In respect to the alleged forcible sexual intercourse, medical evidence appears to be in the negative.

4. Learned A.P.P. submitted that statements of witnesses came to be recorded during investigation and those witnesses have stated that victim narrated the incident to them. From the papers of investigation it is apparent that statement of victim was not recorded. No reason is assigned by the investigating agency for not recording the statement of victim. In this premise statements of witnesses to whom the victim has allegedly disclosed the incident would not assist the prosecution in any way.

5. So far as mental condition of victim is concerned, learned A.P.P. referred to the opinion of the Medical Officer [casualty], Govt. hospital, Parbhani. It is opined that "victim is suffering from schizophemic Pschiatric disorder. Mental status is not sound".

6. Needless to state that to ascertain the mental

condition of victim, investigating agency ought to have sought opinion of an expert i.e. Psychiatrist. As stated by complainant in F.I.R., mental condition of victim used to be periodically sound and periodically not sound. There is nothing with the case papers to show that at the relevant time victim was unable to make her statement. In the absence of any material to show that victim was unable to give her statement, it can not be accepted at this stage that prosecution has prima facie case regarding involvement of applicant in the alleged crime.

7. Applicant is in custody since 08/07/2015. He is permanent resident of village Bharaswada in Taluka and district Parbhani. There is no possibility of his fleeing from justice. However since victim belongs to the same village, appropriate condition can be imposed on the applicant while releasing him on bail. Learned counsel for applicant submits that applicant would stay away from the village till the trial is concluded.

8. In the light of the above, application deserves to be allowed. Hence, the following order.

9. (i) Criminal Application No. 5953 of 2015 is allowed.

(ii) Applicant Anil @ Aniruddha Haribhau Kale is released on bail on P.R. and S.B. of ₹ 20,000/- [Rupees Twenty Thousand] each.

(iii) He shall not tamper with the prosecution evidence and shall make himself available as and when required.

(iv) Till the conclusion of trial applicant shall not enter village Bharaswada in which prosecutrix and complainant are residing.

[INDIRA K. JAIN]
JUDGE