

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram,	Court's or Judge's orders.
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CRIMINAL APPLICATION NO. 6578 OF 2014

DATTATRAUA @ ANNA S/O SHIVAJI GHADGE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Gastgar Santosh B.
APP for Respondent: Mr. A. V. Deshmukh.

CORAM: T. V. NALAWADE, J.
DATED: 4th FEBRUARY, 2015.

PER COURT:

1. This application is filed for bail. Both the sides are heard. This Court has perused the papers of investigation.
2. The application is filed on two grounds, one on the ground of default of not filing charge sheet within the prescribed period under section 167 Cr.P.C. and second on merits.
3. It is the case of the Applicant that in the Crime, he was arrested on 16th August, 2014. He was produced before the learned J.M.F.C. on the same day and order of

custody was made against him on 16th August, 2014. It is submitted by the learned counsel for the Applicant that if the period of 90 days is counted from this date, then the police ought to have filed the charge sheet on or before 14th November, 2014.

4. It appears that the learned Additional Sessions Judge has mentioned that the charge sheet ought to have been filed on or before 15th November, 2014. He submitted that application for bail on default ground was made by applicant on 18th November, 2014 and on that day there was no charge sheet filed against the applicant in the Court and so he was entitled to get the relief of bail. The crime was registered for offence under sections 376, 363, 366 of I.P.C. against the present applicant and also for offence punishable under the Protection of Children from Sexual Offences Act.

5. The submissions made and the order made by the learned Additional Sessions Judge show that the charge sheet was actually filed in the Court on 14th November, 2014. It appears that the charge sheet was returned to police by observing that there was no mention of accused Nos.4 and 5, as to whether they were arrested or they were shown as absconding under section 299 of

Cr.P.C. The learned counsel for applicant submitted that whatever may be the reason for return of the charge sheet the fact that the charge sheet was not there needs to be considered for granting the relief under section 167 (2) of Cr.P.C. The aforesaid submission made by learned counsel for the applicant is not at all acceptable. The provision of section 173 Cr.P.C. needs to be read with section 170 Cr.P.C. It can be said that the police wanted to forward the present applicant for facing the trial and the report was filed against him and so there was a charge sheet against him. There is a power with the police to continue investigation under section 173 (8) Cr.P.C. If two accused were not traced, they were not also forwarded under section 170 Cr.P.C. to the Court by the police and so it could not have been said that there was no complete charge sheet as against the present applicant. When there is mistake from the system, due to such mistake no substantial right can be given to the accused. There may be irregularity or even illegality but such things never give substantial right as a right given under section 167 (2) Cr.P.C. to the accused. Learned counsel for the Applicant placed reliance on one case of Andhra Pradesh High Court reported as **LAWS (APH)-**

2001-8-116 ALD (CRI)-2001-2-660 in the case of **“Julakanti Brahma Reddy V/s State of Andhra Pradesh”**. The facts were totally different. There was an endorsement of the investigating officer himself that the investigation was not complete and the charge sheet was returned. The facts of the present case are of altogether different nature. It cannot be said that the investigation was not complete as against the present applicant. In view of nature of allegations made against the present applicant, this Court has no hesitation to observe that the charge sheet could have been filed only on the basis of the statement of the prosecutrix. Thus, there was nothing left and due to which the charge sheet could have been called as incomplete. This Court holds that the bail cannot be granted on default ground to the applicant due to aforesaid circumstance.

6. Learned counsel for the applicant placed reliance on some cases of Apex Court, which are as under:

- (i) **(2014) 9 S.C.C. 457 [Union of India through Central Bureau of Investigation V.s Nirala Yadav Alias Raja Ram Yadav Alias Deepak Yadav];**
- (ii) **AIR 2013 SC 152 [Sayed Mohd. Ahmed**

Kazi V/s State, GNCTD and others];

7. Those cases were also involving different points. The fact of the present case are of altogether different nature. There cannot be any dispute about the ratio laid down by the Honourable Apex Court.

8. There is allegation against the present applicant that he enticed and took away a girl aged about 16 years from the house of her parents and he detained her with him from 8th March, 2014 to 16th August, 2014 and during this time he took sexual intercourse with the girl. There is a record of school showing that she was born in 1998. There is record of medical examination showing that the age of the girl was between 15 years and 17 years. In view of the amendment to section 375 of I.P.C. there was no question of consent of the girl. Learned counsel for the applicant submitted that they had love affair. Thus, there is material against the present applicant for the offence for which the crime was registered. There is a statement of the prosecutrix to that effect.

9. Considering the aforesaid circumstances and the possibility of tampering with the prosecution witnesses, this Court holds that this is not a fit case to grant bail to

the applicant.

10. In the result, the application is rejected.

11. Before parting with, it is necessary to give some directions to learned Principal District Judge, Osmanabad. It needs to be ascertained as to whether there was any judicial order made for return of the charge sheet. In this Court, a copy of letter signed by learned Additional Sessions Judge is produced, which is to the aforesaid effect. Some record show that the Superintendent had returned the charge sheet. If it is found that the staff had returned the charge sheet and the letter has no basis of judicial order, the Principal District Judge will be at liberty to take appropriate action. If the judicial officer has committed the mistake, then it is to be ignored.

[T. V. NALAWADE, J.]

Dt.04/02/2015
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