

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.701 OF 2015**

Jagganath Bhiku Gaikwad & Anr.	Applicants.
Versus	
The State of Maharashtra	...Respondents.

Mr. Dhananjayrao D. Rananaware, advocate for the Applicants.
Mrs. R.V.Newton APP for the respondent-State.

CORAM : MRS. MRIDULA BHATKAR, J.

DATED : April 28, 2015.

P.C.:

Applicants-accused are facing charges under Sections 376, 315, 506 read with Section 34 of the IPC. Prosecutrix is distantly related to accused nos.1 and 2. Accused No.1 is brother of her grand father, who is 56 years old and the applicant-accused no.2 is his wife, who is 36 years old. Prosecutrix when she has taken her buffalo for grazing outside the village, applicant-accused no.1 raped her and threatened her of her life if act was disclosed to anybody. Accused no.1 repeated act of forcible sexual intercourse 5-6 times in a span of 4-5 months thereafter. On 15.7.2014 when she visited to his house, he called co-accused Dipak Gaikwad and accused no.1 instigated him to rape her. Dipak also raped

her on that day and two days thereafter again he raped her. In the month of October, 2014, she realised that she was pregnant and as per the Dr.'s opinion, she was pregnant of 5 months. Then she gave complaint. Applicants-accused both were arrested on 28.10.2014. Hence, this bail application.

2 The learned counsel for the applicants-accused submits that applicant-accused no.1 has revealed affair of the prosecutrix with Dipak and, therefore, she out of vengeance gave complaint against him. He submits that DNA report of the foetus and the applicant-accused no.1 do not match and, therefore, he is to be released on bail. He further submits that prosecutrix used to visit his house and it shows that he has falsely implicated. He further submitted that there is nothing incriminating against the applicant-accused no.2-Kavita, who happens to be wife of accused no.1.

3 The learned prosecutor opposed the bail application. She relied on DNA Report, which discloses positive matching paternity of DNA test of Dipak with foetus. This on the contrary, prima-facie supports the case of the prosecutrix that she had sexual intercourse with Dipak. Whatever allegations are made in the FIR, at this stage, I am of the view that prima-facie no case is made out against the applicant-accused no.1

for bail. There is no evidence against the applicant-accused no.2 Kavita though there are allegations that she did not object and allow Dipak to take her. Hence, granted bail to the applicant-accused no.2-Kavita.

- i) In the event of arrest, the applicant-accused no.2 shall be released on bail upon furnishing P.R. Bond in the sum of Rs.20,000/-, with one or two sureties in the like amount;
- ii) She shall not pressurize the prosecutrix and shall not keep any contact with the prosecutrix in any manner.
- iii) She shall make herself available for the trial.
- iv) In the event of breach of either of the above conditions, her bail would be cancelled forthwith.

(MRS.MRIDULA BHATKAR, J.)