

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [BA] No.157 of 2015

(Ambadas Haridas Kandelkar

vs.

The State of Maharashtra, through P.S.O. Nandura, District Buldhana)

=====

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

=====

Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 16, 2015.

Heard Mr. N.H. Samundre, the learned Counsel for
the applicant.

The applicant is before this Court seeking his
enlargement on bail in connection with Crime No.119/2014,
registered at Police Station Nandura, District Buldhana for the
offences punishable under Sections 366, 376, 506, 354-A(2)
read with Section 34 of the Indian Penal Code.

The report lodged at the instance of the victim on
18/09/2014 reveals that on 11/08/2014 at about 12:00,
when the victim was in her parental home, the applicant and
other accused by giving threats of life kidnapped the victim
forcefully. She was kept at a place called as Nallha under the
bridge by tying her hands for a whole night. On the next date
i.e. on 12/08/2014, again the applicant and one Kisna
repeated the act and at about 08:00 p.m., she was taken to

the same place. After leaving the place by Kisna at about 10:00 p.m., the applicant committed rape on the victim. Again, the victim was subjected to sexually violence in the early morning. The applicant then gave threats and left the place. Thereafter the victim reached home. She stated that due to fear and threats of life, she had not disclosed this incident to the parents. She stated that on 05/09/2014, the applicant and other accused gave threats and asked for sexual pleasure. Ultimately by gathering courage, the victim lodged report to the police station.

The learned Counsel for the applicant submits that the report lodged against the applicant is a far-fetched story. He submits that though it is alleged that the victim was subjected to sexual violence on 12/08/2014, the report is lodged on 18/09/2014 i.e. nearly after a month. He then submits that the material collected by the investigating agency concluded in filing charge-sheet itself shows that the victim had changed her version and stance. He also submits that even the statement of father of the victim shows that it is a far-fetched story against the applicant only to implicate the applicant in a serious offence. The learned Counsel on the backdrop of the material above referred prays for enlargement of the applicant on bail.

Mr. P.V. Bhoyar, the learned Assistant Government Pleader vehemently opposes the application. He submits that the applicant had committed a serious act. He further submits that the delay in lodging the report is properly explained by the victim. He submits that the victim stated that as she was under fear and pressure, she had not lodged the report immediately, but she could gather courage only after few days and then report was lodged.

I have gone through the material collected by the investigating officer. It is very interesting to note that the father of the victim submitted a missing report of his daughter on 12/08/2014. In that report, he stated that on 11/08/2014, while he was in the State of Madhya Pradesh, an information was received on a mobile phone through his wife that on 08/08/2014, on returning from the flour mill, his wife did not find his daughter available in the house. On making enquiry, she was not even found in her matrimonial home. A search was also taken at the house of Haridas Kandelkar, but the daughter was not found there. Accordingly the report was lodged. The material then reveals a statement recorded on the very next day of Kisan i.e. the father. In this statement, the father gives totally a new story. He states that his daughter on her own returned to her

parental home and informed that as there was some dispute with the brother, she left her parental home in the heat of passion. On the backdrop of the report lodged by the father and the statement of the father, the report lodged by the victim gives totally a different version. In the report, she stated that she was at her parental home and on 11/08/2014, the mischief was played by the applicant and other accused. Thus, the material collected by the investigating agency itself shows that the victim gives one version, whereas the father of the victim gives another version. The father of the victim changed his version immediately on the next date.

Thus, the learned Counsel for the applicant was justified in submitting that there are many missing links in the story of the prosecution on the face of it, which leads to a suspicion over the prosecution story. The learned Counsel for the applicant was also justified in submitting that the applicant is behind the bars for a considerable period and no fruitful purpose would be served by keeping the applicant for further indefinite period in the custody.

Considering the above referred material, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail. The apprehension of the State can be taken care of by imposing

certain conditions on the applicant.

In the result, the application is allowed. The applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two solvent sureties in the like amount on the following conditions.

- i. The applicant to attend Police Station Nandura, District Buldhana on every second and forth Sunday of the month from 09:00 a.m. to 12:00 noon and maintain a diary of his attendance duly countersigned by the Police Station Officer, till commencement of the trial.
- ii. The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicant to submit his residential address and contact numbers, such as phone/mobiles numbers, to the investigating agency.
- iv. In case the applicant is moving out of the area of Police Station Nandura, he shall take permission and inform the concerned Police Station about his visit to other place.

In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

**sdw*