

(1)

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

CRIMINAL APPLICATION NO.986 OF 2016

Radha w/o Krishna Gaikwad,
age : 22 years, Occu. Household,
r/o Karewadi, Taluka Parali
Vaijnath, District Beed

..APPLICANT

VERSUS

The State of Maharashtra & ors.

..RESPONDENTS

Mr N.K. Kakade, Advocate for applicant;
Mrs R.K. Ladda, Addl. Public Prosecutor for respondents;
Mr Anil M. Gaikwad, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 29th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant seeks her release on pre-arrest bail, in connection with C.R. No.97 of 2015, registered with police station, Shirsala, Taluka Parali Vaijnath, District Beed, for offences punishable under sections 376, 306 read with section 34 of the Indian Penal Code and under sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. The prosecution story against the applicant is that she is wife of Krishna Kashid, whose brother Bharat Kashid is named to be the main accused in the crime in question. The complainant Ramesh claims that his

(2)

daughter Ashwini, aged 13 years, was raped by Bharat Kashid, the brother of husband of the applicant. The role attributed to the applicant is as regards facilitating and aiding the commission of crime and it is claimed that she has removed said Ashwini from her house and handed over her to accused Bharat.

3. While trying to make out a case for grant of pre-arrest bail, Mr Kakade, learned Counsel appearing on behalf of the applicant would urge that apart from the fact that the applicant is a woman, having regard to the narrations made in the first information report, prima facie it could be inferred that improbable and unbelievable role is attributed to her. He would submit that the applicant's age is stated to be 24 years, who is claimed to have forcibly removed Ashwini and handed over her to the main accused Bharat. The first information report further depicts repetition of the offence on earlier count was not reported to the police, but for the last incident alleged to have taken place on 15th December, 2015.

4. According to the learned Counsel, in the above background, the applicant is entitled for grant of pre-arrest bail.

5. Learned Addl. Public Prosecutor, while opposing the application, would urge that the applicant is charged with a serious offence under Protection of Children from Sexual Offences Act. He would then invite my attention to the cause of death as stated in the post mortem report, coupled with the statement of an eye-witness, who has stated that

(3)

deceased Ashwini was removed by the applicant from her house and was handed over to the main accused.

6. Upon perusal of the investigation papers, although it is noticed that there is an eye-witness to the incident, namely, Archana, who has stated about involvement of the applicant in the crime in question, as regards removal of deceased Ashwini from her house, yet narrations made in the first information report, in relation to the present applicant, in my opinion, appear to be improbable and unbelievable. Apart therefrom, the cause of death of Ashwini as stated in the post mortem report is evidence of pulmonary edema with haemorrhagic mucosa of stomach.

7. It is further required to be noted that custodial interrogation, in the above referred background, particularly having regard to perusal of the narrations made in the first information report is not necessary. The applicant is a woman, having no criminal antecedents. Thus, the applicant is entitled for pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicant, pre-arrest bail, in connection with C.R. No.97 of 2015, registered with police station, Shirsala, Taluka Parali Vaijnath, District Beed, for offences punishable under sections 376, 306 read with section 34 of the Indian Penal Code and under sections 4 and 6 of the Protection of Children from Sexual Offences Act, she be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(4)

The applicant shall attend the concerned police station initially on 7th and 8th March, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

Till filing of the charge-sheet, the applicant shall not enter village Karewadi, Taluka Parali Vajjnath, District Beed, save and except for investigation purpose.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj