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

CRIMINAL APPLICATION NO. 1213 OF 2016

1. Santosh Popat Chavhan
2. Tatya Popat Chavhan ...APPLICANTS

VERSUS

The State of Maharashtra ...RESPONDENT

Mr N. C. Garud, Advocate for applicants;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent;
Mr R.R. Karpe, Advocate to assist Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO. 1067 OF 2016

Vilas s/o Bhalchandra Chavhan ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr V. P. Latange, Advocate for applicant;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent;
Mr R.R. Karpe, Advocate to assist Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO. 1066 OF 2016

Gotya @ Akshay s/o Baban Waghaskar ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr V. D. Sapkal, Advocate for applicant;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent;
Mr R.R. Karpe, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 2nd March, 2016

ORDER :

(2)

By these applications under section 439 of the Code of Criminal Procedure, the applicants seek their release on bail, in connection with C.R. No.15 of 2016, registered with Shrigonda police station, Dist. Ahmednagar, for offences punishable under sections 376, 326, 141, 143, 147, 148, 149, 323, 504, and 506 of the Indian Penal Code.

2. The case of the prosecution is that on 14th January, 2016, the applicants assaulted victim Lata, a woman aged 35 years. In the supplementary statement recorded on 18th January, 2016, she claimed that one of the accused, namely, Aba Chavan, has forced her to accompany him on motorcycle and thereafter they were followed by the other accused persons, including the present applicants in a four wheeler. It is claimed that accused Aba thereafter assaulted her and committed rape. The role attributed to the applicants is facilitating Aba in commission of the crime in question.

3. The applicants were arrested in the above referred crime on 22nd January, 2016 and were subjected to custodial interrogation. It is claimed that the applicants have used sticks for assaulting the victim Lata.

3. So far as sexual assault is concerned, there is no direct role attributed to the applicants in commission of the offence punishable under section 376 of the Indian Penal Code.

(3)

4. In the above background, learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of bail, would urge that the applicants are falsely implicated in the crime in question. According to them, on 14th January, 2016 the victim initially narrated an altogether different story, which relates to assault on her by the four accused persons, who are named in the first information report on that day, whereas in the supplementary statement recorded on 18th January, 2016, she has come out with a case of sexual assault and physical assault by the applicants.

5. Learned Counsel then would urge that it is after four days of lodging of the first information report, the complainant has changed her version by giving altogether different colour to the crime in question, which speaks that the story narrated in the supplementary statement is by way of an afterthought and in a calculated manner she has tried to rope the applicants falsely in the crime in question. Learned Counsel then would urge that one of the accused, namely, Shivaji against whom certain role is attributed in the first information report filed on 14th January, 2016, was already released on pre-arrest bail by learned Additional Sessions Judge, Ahmednagar by order dated 30th January, 2016, passed in Criminal Misc. Application No.69 of 2016, by observing that the story narrated by the complainant appears to be improbable as investigation papers depict otherwise. Learned Counsel then would urge that during custodial interrogation of the applicants, nothing could be recovered from them and as such, their further detention is not necessary.

(4)

6. Learned Addl. Public Prosecutor opposed the application on the ground that on 14th January, 2016, when the first information report was lodged by the complainant she was not in complete orientation and it is only on 18th January, 2016, after having recovered from trauma, she has narrated complete story. Having regard to the fact as regards attributions in the first information report and the supplementary statement, he would submit that the medical report supports the claim of the victim and, therefore, the applications be rejected.

7. Mr Karpe, learned Counsel appearing on behalf of the complainant, while adopting the arguments advanced by the learned Addl. Public Prosecutor, would urge that the nature of injuries suffered by the victim speaks of a brutal attack on her. He would then submit that in the event of release of the applicants on bail, there is likelihood of tampering with the prosecution evidence and as such, prayed for rejection of the application.

8. Having considered rival submissions and on perusal of the contents of the first information report and investigation carried out till date, it is noted that it is difficult to infer that there was sexual assault on the victim Lata, as such the report of the Chemical Analyzer from Forensic Science Laboratory is sought. It is further noted that the role attributed to the applicants is that of assault and the applicants were already subjected to custodial interrogation. No role is attributed to the applicants about their direct involvement in commission of offence punishable under section 376 of the Indian Penal Code.

(5)

9. Apart from above, the story during the investigation as is brought on record from the statement of one of the eye-witnesses, namely, Chandan speaks of assault by three other women and not by the present applicants.

10. In the above background, in my opinion, false implication of the applicants in the crime in question cannot be ruled out. Thus, it will be appropriate to direct release of the applicants on bail. I, therefore, pass following order :-

The applicants be released on bail, in connection with C.R. No.15 of 2016, registered with Shrigonda police station, Dist. Ahmednagar, for offences punishable under sections 376, 326, 141, 143, 147, 148, 149, 323, 504, and 506 of the Indian Penal Code, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

Till filing of the charge-sheet, the applicants shall not enter village Wadali, Tq. Shrigonda, Dist. Ahmednagar.

The applicants shall not tamper with the prosecution evidence.

Criminal Applications stand allowed.

(N.W. SAMBRE, J.)

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