

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

CRIMINAL APPLICATION NO. 1955 OF 2016

Raosaheb Shahurao Jawale

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. R.G. Hange, Advocate for applicant.
Ms. R.P. Gaur, A.P.P. for respondent.

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**CORAM : N.W. SAMBRE, J.
DATED : 4th MAY, 2016**

ORDER :

1. Heard Mr. Hange, learned Counsel for the applicant accused who is seeking regular bail in Crime No. 112/2015 registered on 3rd December, 2015 for an offence punishable under Section 376(J)(L) and Section 342 of the Indian Penal Code. It is the case of the prosecution that one Eknath Dongre happened to be cousin of Mrs. Janvibai aged about 55 years, a mentally disturbed lady. It is claimed that when the complainant was passing from the road where the accused-applicant was residing, he heard certain shouts and as such he pushed the door of the applicant's house and saw the applicant and victim in naked position. It is the case that applicant was about to rape the victim and as such the applicant was caught red handed.

2. In view of the complaint, the applicant came to be arrested on the same day. Investigation in the matter is already complete and charge-sheet is filed.

3. While trying to make out the case for grant of regular bail, Mr.Hange submits that even if the prosecution case is accepted as it is, there is hardly any material on record to connect the present applicant to the crime in question for the following reasons:

- A) Prima facie victim appears to be a consenting party.
- B) If not, the applicant is falsely implicated as the occurrence of incident is the residence of the applicant-accused and how the victim reached at such place is not explained.
- C) There is hardly any evidence on record much less the medical evidence to demonstrate the mental status of the victim.
- D) The applicant is a public servant (being a postman) is very much available for trial and there are hardly any chances of running away from prosecution.

4. The learned APP opposed the application on the ground that there is an eye witness to the incident in question. She would then

submit that the medical examination of the victim and the complainant confirms about their qualification for sexual intercourse. She would then invites attention of this Court to the various statements which according to her demonstrates prima facie involvement of the applicant-accused in the crime in question.

5. Having bestowed my thoughts to the submissions made it is required to be noted that narration of story as is stated by the complainant Eknath appears to be some what improbable even if it is to be accepted as it is. There is hardly any material much less the medical evidence and/or investigation on the aspect as regards the mental status of the victim. Janvibai who is victim is claimed to be aged 55 years old is a married woman. In this backdrop it is difficult to infer that the victim was subjected to the crime at the behest of the present applicant when she herself found to be at the place of the present applicant if the prosecution story is accepted as it is.

6. Apart from the above, it is required to be noted that the medical examination only speaks of the sexual intercourse and there is no positive certification that the applicant has carried out an offence as claimed. Apart from the above there are no injuries whatsoever noticed either on the private part or any bodily injuries to the victim.

7. Mr. Hange in my opinion is right in pointing out that the applicant is a public servant, who is very much available for the prosecution and there are hardly any chances of running away from the prosecution. There are no criminal antecedents whatsoever.

8. The Investigation in this matter is already complete and the charge-sheet is filed, as such, in my opinion, in the background of above observations further detention of the applicant is not necessary, as such he is entitled to be released on bail. Hence the following order:

The applicant be released on regular bail upon executing of P.R. bond of Rs.25,000/- with one surety in like amount in Crime No. 112/2015 punishable under Sections 376(J)(L) and 342 of the Indian Penal Code, registered with Wadwani Police Station.

9. The applicant shall not tamper with the evidence. Application is allowed and disposed of in the above terms.

(N.W. SAMBRE, J.)