

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2821 OF 2016

Akshay S/o Bhimrao Kapate .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....
Mr. M.V. Ghatge, Advocate for the applicant
Mr. A.S. Shinde, APP for the respondent-State
.....

CORAM : N.W. SAMBRE, J.

DATE : 04/07/2016

ORAL ORDER :

Heard.

2. This is a second application, after the applicant had withdrawn earlier Criminal Application No. 4088 of 2015 on 15/10/2015, as he was granted liberty by this Court, to move, if the trial could not concluded within 9 months therefrom.

3. The applicant thereafter approached the trial Court seeking regular bail, which was rejected by order dated 27/4/2016 by the learned Additional

Sessions Judge, Nanded, as according to the said Court, there are no change in the circumstances.

4. In view of liberty granted by this Court in an earlier vide order dated 15/10/2015 referred supra, this Court proceeded to consider case of the applicant on merit.

5. The prosecution case against the applicant, who is 19 years old, is that the victim Manisha, claiming to be about 15 years of age, alleged that the applicant forced her to ride his bike and she was subjected to forcible physical relationship, resulting into registration of the crime in question.

6. The applicant came to be arrested on April 13, 2015 for the offences punishable under section 363, 376(D), 506, 34 of the Indian Penal Code and under section 3(1)(x)(xi), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under section 4 of the

Protection of Children from Sexual Offences Act in crime no. 40 of 2015 registered at Ardhapur Police Station, Tq. Ardhapur, Dist. Nanded.

7. Perused the contents of the FIR. Victim – Manisha after statement dated 12/4/2015 has given supplementary statement, which speaks of earlier sexual assault by the applicant. It is then required to be noted that the perusal of the FIR depicts that the victim – Manisha travelled with the applicant on his bike at various densely populated places, i.e. main road, eateries etc. and her presence with the applicant was noticed by Ananda Datta Savate and Kakanaji Ramji Savate and close relatives.

8. If the investigation as is carried out, particularly, in statement of the applicant is perused in the background of the allegations, the same prima facie speaks of the consent and the crime is arising out of a love affair.

9. Apart from above, the medical evidence does not support the case of the prosecution. Exhibit 9 and 10, which were sent for chemical analysis to the Forensic Science Laboratory, speaks of presence of semen from 'A' blood group, however, there is no mention about said exhibit in the complaint or the statement of the victim. As such, how those exhibits 9 and 10 would connect the present applicant to the crime in question, is not elaborated in the investigation papers. There is no material to connect the present applicant to the said Exhibits.

10. Apart from above, the right of the accused of speedy trial is claimed to be a fundamental right. In view thereof and having regard to the earlier order passed by this Court granting liberty to the applicant, in my opinion, it will be appropriate to order release of the present applicant on bail. Hence, the following order:-

11. The applicant be released on bail in Crime no.40 of 2015 registered with Ardhapur Police Station, Tq. Ardhapur, Dist. Nanded for the offences punishable under section 363, 376(D), 506, 34 of the Indian Penal Code and under section 3(1)(x)(xi), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under section 4 of the Protection of Children from Sexual Offences Act, upon his executing P.R. bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand) with two sureties in the like amount.

12. The applicant shall not enter village – Yelegaon, Tq. Ardhapur, Dist. Nanded till conclusion of the trial.

13. The applicant shall not tamper with the prosecution evidence or influence the witnesses in any manner.

14. During trial, the applicant shall co-

operate with the Court below by not seeking unnecessary exemptions and shall not protract the trial.

15. Any attempt on the part of the applicant to protract the trial, if noticed by the learned Court below, it shall be open for the Court below to proceed with cancellation of bail of the applicant.

16. Criminal Application stands disposed of accordingly.

[N.W. SAMBRE]
JUDGE

arp/-