

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3817 OF 2016

Sarita Sheshrao Sable,
Age : 27 years, Occu. : Household,
R/o Burudgaon Road, Ahmednagar,
Tq. & Dist. Ahmednagar

.. Applicant
(Orig. Informant)

Vs.

1] The State of Maharashtra,
Through Police Station Camp,
Ahmednagar, Dist. Ahmednagar

2] Advocate Abhijeet Rajesh Kothari,
Age : 26 years, Occu.: Lawyer,
R/o Abhijeet, Munot Estate,
Station Road, Ahmednagar,
Dist. Ahmednagar

.. Respondent
(R. No.2 – Orig. Accused)

Mr. Sudarshan J. Salunke, Advocate for the applicant

Mr. A.D. Namde, APP for the respondent/State

Mr. N.S. Ghanekar, Advocate for respondent no.2

CORAM : A.S. CHANDURKAR, J.

DATE : 30/11/2016

ORDER :

Heard.

2. The applicant, who is the informant in Crime
no.52 of 2016, registered at Bhingar Camp Police

Station, Dist. Ahmednagar under Sections 376, 313, 511, 323, 504 and 506 of the Indian Penal Code, seeks cancellation of the order dated 07/06/2016 passed by the learned Additional Sessions Judge, Ahmednagar granting pre-arrest bail to respondent no.2.

3. As per aforesaid report, the informant after referring to an earlier crime bearing no.I-276 of 2014, registered against respondent no.2 has reported that respondent no.2 had assured her of marriage and had thereafter established sexual relations with her. On 12/2/2016 also, the respondent no.2 had forcible intercourse with her. After two days, the informant realized that there was likelihood of she getting pregnant and hence requested the respondent no.2 and her family members to have their marriage solemnized. This went on for some period and ultimately on 8/5/2016 when the informant had been to the house of the respondent no.2, she was forced by his family members to take abortion pills forcibly. On that basis, aforesaid report came to be lodged on 10/5/2016. The respondent no.2 apprehending his arrest approached the Sessions Court and after considering the material

available on record, the learned Sessions Judge allowed the said application subject to certain conditions.

4. Learned counsel for the applicant submitted that the order granting pre-arrest bail to the respondent no.2 was without taking into consideration the gravity of the offence, by giving importance to the aspect of delay and without taking into consideration the requirements of custodial interrogation of the respondent no.2. The order granting pre-arrest bail was a perverse order. It was submitted by placing reliance upon the judgment of the Hon'ble Supreme Court in **State of U.P. Vs. Manoj Kumar Pandey AIR 2009 S.C. 711**, that the aspect of delay is not very material in rape cases. It was then submitted that when the notice of the present proceedings were sought to be served on the respondent no.2, he avoided to accept the said notice. Instead, he tried to give threats and abuses to the applicant in the Court premises on 12/8/2016. The informant had therefore lodged crime no.268 of 2016 against the respondent no.2 and his father. It was submitted that for proper investigation of the aforesaid crime and considering the fact that the

consent of the informant was obtained under false assurance of marriage, offence under Section 376 of the Indian Penal Code was made out. Reliance was placed on the judgment of the Hon'ble Supreme Court in **State of U.P. Vs. Naushad 2014 Cri.L.J. 540** in that regard. Learned counsel also referred to the principles laid down by the Hon'ble Supreme Court in Criminal Appeal no. 1141 of 2016 decided on 24/11/2016 in **State of Bihar Vs. Rajballav Prasad @ Rajballav Pd. Yadav @ Rajballabh Yadav** and in **Adri Dharan Das Vs. State of West Bengal AIR 2005 S.C. 1057**. It was therefore submitted that the present was a fit case to cancel the pre-arrest bail granted to the respondent no.2.

5. Learned Additional Public Prosecutor for the respondent no.1/State submitted that on 16/5/2016, the supplementary statement of the applicant had been recorded. Lodging of various reports both by the applicant as well as respondent no.2 indicates the attempts by respondent no.2 to threaten and exert pressure on the informant. He therefore supported the prayer of the applicant.

6. Learned counsel for respondent no.2 opposed the application and submitted that there was no case made out to cancel the pre-arrest bail. After the order dated 7/6/2016 was passed by the Sessions Court, the applicant had fully co-operated with the investigation and none of the conditions had been breached. He submitted that a false case was lodged against respondent no.2 which would be evident from the fact that on 31/3/2016, the applicant had been to Kotwali Police Station with a grievance that the respondent no.2 had given threat to her in the Court premises. He submitted that according to the case of the applicant, on 12/2/2016, the respondent no.2 had forcible intercourse with her. It was then decided by the parties to get married on 24/2/2016 and, thereafter, on 28/2/2016. Same however did not materialize. Similarly, the allegation regarding assault and threats were also stated to be given on 16/3/2016. Therefore, all this could have been stated in the report lodged by the applicant on 31/3/2016. He then submitted that the applicant was reluctant to undergo medical examination despite being called by the Investigating Officer. It was further submitted that

on 8/5/2016, mother of the respondent no.2 and his aunt were both present at Pune which fact was clear from the extracts of the CCTV footage. The Investigating Officer had also found that said persons were not present on 8/5/2016 at Aurangabad. He denied that notice issued by this Court was sought to be avoided and submitted that the respondent no.2 had himself lodged crime no.266 of 2016 against the applicant for giving abuses and threats in Court premises. He therefore submitted that in absence of any extraordinary or overwhelming circumstances, there was no reason to interfere with the order granting pre-arrest bail at the instance of the applicant.

7. I have heard learned counsel for the parties at length and I have perused the material placed on record. Perusal of the order dated 7/6/2016 passed by the learned Sessions Judge indicates that it was found that the vehicle involved in the crime had already been seized and that the medical examination of the applicant had also been conducted. It was then noted that as the respondent no.2 was permanent resident of the city, possibility that he would not be available

for the trial was ruled out. It was then noticed that on 12/2/2016 and, thereafter, on 31/3/2016, the applicant had gone to the concerned Police Station but no report in the matter of rape being committed on her was lodged. It is in that context that the Sessions Court has observed that the delay in lodging the present report on 10/5/2016 was one of the grounds that require consideration especially since the applicant was regularly visiting the Police Station and was aware of her legal rights. Hence, the submission made by the learned counsel for the applicant by placing reliance upon decision in the matter of **Manoj Pandey** (supra) that the aspect of delay did not deserve consideration, cannot be accepted. I also do not find order dated 7/6/2016 to be perverse and the same reflects consideration of the relevant material.

8. As regards the attempt to serve copy of the notice of the present proceeding on the respondent no.2, it can be seen that same has resulted in both sides filing reports against each other. The applicant has filed Crime no.268 of 2016 while the respondent no.2 has filed Crime no.266 of 2016. The record of the

present proceedings indicates that the respondent no.2 appeared in the same and filed his affidavit dated 27/9/2016 on record. There is nothing on record to indicate that it was reported that the respondent no.2 had avoided to accept any notice. Hence, said aspect is also not found relevant.

9. As regards the submission of learned counsel for the applicant that grant of bail in the present matter was not justified considering the nature of offence, it is seen that the Investigating Officer has found that the applicant was reluctant to submit herself for medical examination despite being called upon on various occasions. Further, as per the report lodged by the applicant, the respondent no.2 had forcible intercourse with her on 12/2/2016 and that 2-3 days thereafter the applicant realized that she had missed her menses period. Prima facie, said aspect appears to be doubtful as conception would require some more time than 2-3 days after intercourse, as stated by the applicant. Similarly, the parties were familiar with each other and the applicant despite being present in the Police Station on 31/3/2016, did not choose to

make any grievance in that regard to the incident dated 12/2/2016. In this backdrop therefore the submission made on behalf of the applicant that as the offence of rape had been committed by giving false assurance, the protection granted deserves to be withdrawn, cannot be accepted. The judgment in the matter of **Naushad** (supra) does not assist the aforesaid submissions. I do not find that there are any overwhelming or extraordinary circumstances warranting cancellation of the order granting pre-arrest bail. The decisions in the matters of **Adri Dharan Das** and **Rajballav Prasad** (supra) also do not assist the case of the applicant.

10. In view of aforesaid, I do not find that any case has been made out to grant the prayers made in the application. Application is accordingly rejected. Observations made in the present order are only for deciding the prayers made in the present application.

[A.S. CHANDURKAR]
JUDGE

arp/