

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

**CRIMINAL APPLICATION NO. 3496 OF 2016
IN
CRIMINAL APPEAL NO. 875 OF 2015**

Vasant Daga Bagul ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. Joydeep Chatterji, Advocate for applicant.

Mr. R.V. Dasalkar, A.P.P. for respondent - State.

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CORAM : A.I.S. CHEEMA, J.

DATED : 12th JULY, 2016

ORDER :

1. Heard the learned Counsel for applicant – Accused No.2. The appeal has been filed by the two convicted accused. It is stated by the learned Counsel for the applicant that Accused No.1 – Babaji was granted bail by this Court in Criminal Application No. 6433 of 2015 vide order dated 2nd December, 2015. The learned Counsel states that he does not have instructions whether the Accused No.1 did furnish the bail bonds in the Trial Court. Registry to call for report.

2. As regard Accused No.2 i.e. the present applicant – Vasant, the

present application has been filed for bail. It appears that earlier bail application was filed vide Criminal Application No. 6434 of 2015 and it was withdrawn unconditionally on 16th December, 2015. Apparently this Court was not with the applicant for the purpose of bail. Now still this application has been moved again for bail.

3. The learned Counsel submits that in this matter the victim according to the prosecution went missing on 07th February, 2004 and came back only on 12th July, 2004. It is stated that on 09th February, 2004 father of the victim – P.W. 1 had filed missing report Exhibit 27 stating that as the victim was scolded, she had left the house. It is stated that however, subsequently when the victim came back on 12th July, 2004, P.W.1 lodged F.I.R. on 14th July, 2004 stating that the accused persons had kidnapped the victim who was a minor and forcibly repeated acts of rape were committed on her. It is stated that P.W.6 – mother of victim in her evidence did not depose that when the victim came back, she told that the present applicant had also committed rape on her. According to the Counsel, had it been a fact that this applicant committed rape the victim would have told the same to her mother. The learned Counsel has taken me through the evidence of other witnesses. He has also pointed out from the evidence of P.W. 7 – Investigation Officer that

he did not go to the school or hospital to verify the date of birth of the victim.

4. The learned Counsel submitted that applicant - Accused No.2 is hopeful that his appeal would be allowed and it is stated that he has good case. The learned Counsel submitted that the applicant was suffering from heart ailment and in 2012 he had undergone operation. Documents regarding the same have been filed.

5. The learned A.P.P. opposed the application. He submitted that there is sufficient evidence to show that the minor was kidnapped and taken by this accused on the pretext of finding of job for her and then this and other accused continuously raped her and she was almost pushed into prostitution and forced to perform dance in certain hotels. The learned A.P.P. submitted that the Trial Court has rightly appreciated the evidence and there is sufficient evidence to convict the accused. The learned Counsel submitted that when the incident occurred, the accused was 48 years old and had the sufficient maturity to understand not to put a minor girl to such torture. The learned A.P.P. submitted that no leniency can be shown on health ground to such accused and he should not be granted bail.

6. I have gone through the paper-book which is available in this matter. I have seen the evidence as well as the judgment of the Trial Court and reasons recorded by the Trial Court for convicting the accused. The evidence of victim – P.W.4 clearly shows that this applicant – Accused No.2 had taken her on pretext of finding a job for her and then the victim was forced by this applicant along with one Dinesh to consume liquor and she was raped by the accused as well as Dinesh. The evidence of victim shows as to how she was taken to Bombay and kept with one lady Shantabai and she was forced into prostitution. Her evidence shows how she came back.

7. It is argued that the parents of the victim earlier took a stand that the victim had run away on her own as she was scolded and later on they revised stand and filed the present F.I.R. However, perusal of Exhibit 27 shows that what the parents did when their minor daughter went missing was that on the basis of their surmise recorded that she went away because she was angry. The words used in Exhibit 27 show that she went away as “rag ala asava” i.e., she may have got angry. Apart from this, what happened to the victim who had suddenly gone missing was something which only could state. Her evidence available on record shows involvement of the present applicant. There is also evidence of

P.W.2 – Head Master of the school for proving age of the victim. The learned A.P.P. submitted that the evidence on record shows that the victim was at the concerned time of the age of 16 years and 22 days and thus according to him she hardly had sufficient understanding to know real intention of accused.

8. I have gone through the certificates relied on by the applicant – Accused No.2 to show that he had heart problems. The certificates are of 2012-13. There is nothing to show any current certificate requiring immediate medical assistance. Apart from this, if any medical treatment is required, jail authorities liable and expected and would naturally give all the necessary medical assistance to the accused when accused is in jail.

9. Going through the material, prima facie, I find that the prosecution has brought sufficient reliable evidence to prove the guilt and looking into the gravity of the offence it would not be appropriate to release the applicant – Accused No.2 – Vasant Daga Bagul on bail. Application is rejected.

(A.I.S. CHEEMA, J.)

SSD