

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

927 CRIMINAL APPLICATION NO. 3543 OF 2016

RAVI S/O ANNA SHINDE

VERSUS

THE STATE OF MAHARASHTRA

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Mr. R.S.Deshmukh, Advocate for Applicant.

Mr. S.J.Salgare, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 16th SEPTEMBER, 2016

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PER COURT :

1. The applicant in Crime No. 204/2015 registered at Pathri police station, Pathri, Dist. Parbhani for the offences punishable u/ss 376 (D), (2), 376 (2) (h), 394, 397, 324, 323 of the Indian Penal Code, by this application is seeking his release on bail after filing of the charge sheet.

2. Heard the learned counsel for applicant. He argued that present applicant has no criminal antecedents. The learned counsel took me through the F.I.R. as well as the statement of the victim woman and argued that though it is

averred that she was dragged in prominent condition by accused persons, medical examination of the victim lady does not show any injury on her person. The learned counsel further argued that the allegations are to the effect that there were fists and kicks blows on abdomen of the victim lady. The learned counsel further drew my attention to the opinion of the Medical Officer and submitted that there is no positive opinion regarding rape on the victim lady. The learned counsel, therefore, argued that the applicant is entitled for bail.

3. The learned A.P.P. opposed the application by contending that in test identification parade, the accused persons including the present applicant is identified by the witnesses. The learned A.P.P. further argued that there is evidence of recovery. It is further argued that in the similar way, nearby houses are raided by the accused persons in the same night.

4. Perused the charge sheet. The F.I.R., statement of the victim lady as well as report of her medical examination goes to show that the victim lady was carrying pregnancy of 5 months duration.

5. The incident in question took place in the night intervening on 28/12/2015 and 29/12/2015 in the field where the informant was working and residing with his wife i.e. the victim lady. Another worker named Ranjit Gaikwad and his wife were also residing in the same field. Their rooms

made up of tin sheets were adjacent to each other. One Shahabuddin Bashir was also residing there. According to the prosecution case, 4 accused persons came to the house of the prosecuting party. Initially they entered in the room of Ranjit and roped him as well as his wife Varsha by assaulting by means of Axes. The charge sheet reveals that accused persons were carrying Axes, purcha/knife and iron pipes. By breaking open the partition wall made up of tin sheet, the accused persons entered in the room of informant Sk. Anis and gagged him by means of scrap. According to the prosecution case, then his wife who was carrying 5 months duration was abducted by accused persons after robbing them of their valuables. Ultimately, wife of the informant was found in the nearby field while shouting for help. She made disclosure about commission of rape on her by accused persons.

6. During the course of investigation, looted ornaments worth Rs. 8,500/- came to be seized on the basis of disclosure statement of the present applicant.

7. Statement of the victim woman makes a categorical averments that after abducting her, she was taken in the field where 3 of the accused persons committed rape on her while one another was watching them. She averred that accused persons gave fists and kicks blows on her abdomen. The statement of the victim lady shows that she was raped by accused persons under threat of knife.

8. The victim woman was subjected to medical

examination immediately. Report of her medical examination shows the history narrated by her to the Medical Officer, which constitute her previous statement made soon after the incident and as such admissible u/s 157 of the Evidence Act. The victim lady reiterated the same history of gang rape under threat of weapon to her husband. The Medical Officer, after examination of the victim lady, found no internal injury on her private parts. The opinion given is neither positive nor negative.

9. It is well settled that in cases of sexual violence against woman, evidence is required to be considered in broader perspective. Here is the case of married woman carrying pregnancy, who was gang raped by robbers. In such a situation, non finding the injuries of her private part is of no significance as she might have submitted her chastity under threat of weapon and in the light of the incident of assault by accused persons on her neighbours as well as on her husband. Hence, her version would prevail over the medical report and there is no necessity of causing injuries in case of rape on a married woman, particularly under the threat of weapons.

10. All accused persons including the present applicant were subjected to test identification parade. The learned counsel for the applicant argued that the test identification parade is of no significance as it was held after a period of one month after the incident. The effect of belated test identification parade is to be examined at the trial. That

apart, the test identification parade is preliminary for the purpose of the Investigating Officer in order to ascertain whether the investigation is going-on in correct line. What is material is identification in the dock while in the witness box. In the case in hand, even in the test identification parade, the victim lady has identified the present applicant.

11. In this view of the matter, considering the fact that if the offence is proved, the sentence would be imprisonment till death, no case for bail is made out. The circumstances in which the crime is committed and the nature of crime does not allow me to enlarge the applicant on bail. Hence, the following order.

(i) The Criminal Application stands rejected.

[A.M.BADAR, J.]