

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

**CRIMINAL APPLICATION NO.4030 OF 2015 IN**  
**CRIMINAL APPEAL NO.562 OF 2015**

Shri Suresh @ Dursing Jahagrya Pawara ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....  
Shri Shrikant S. Patil, Advocate for applicant  
Shri S.M. Ganachari, A.P.P. for respondent/ State  
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CORAM:    A.I.S. CHEEMA, J.

DATED:    6th April, 2016.

ORAL ORDER :

1.            Heard counsel for applicant - original accused.  
Perused the Criminal Appeal filed by the applicant, the record  
and proceedings and the judgment of the trial Court.

2.            The learned counsel for the applicant states that the  
incident is alleged to have occurred on 9.4.2014 at about 8.00 -  
8.30 p.m. at the field when the husband of the prosecutrix had  
gone with the employer outside the village. According to the  
counsel, the prosecutrix alleged that she was threatened with life

of her children and allegedly rape was committed on her. It is stated that, although the incident is alleged to have taken place at 8.00 - 8.30 p.m. on 9.4.2013 and the prosecution case was that at about 10.00 p.m. the husband returned from outside the village to the prosecutrix and his employer and Driver of tractor were also there, and she told the incident to all three of them, the F.I.R. was not filed in the same night itself.

It is stated that, the explanation that the F.I.R. could not be filed in the night because vehicle was not available, is not acceptable. The counsel submits that, the doctor, who examined the prosecutrix did not find any external injuries to her person and the doctor, who examined the accused recorded various injuries which were claimed, are possible if during the course of rape the prosecutrix resists. The counsel stated that, it would not be possible that prosecutrix had no injury if she has been forcibly raped. It has been argued that, the doctor did not find any fresh penetration when he examined the prosecutrix. The learned counsel submitted that, looking to the material available and reasonings of the trial Court, the applicant may be released on bail. It is stated that, the applicant was earlier in jail after the offence was registered, between 11.4.2014 to 26.11.2014, when he was released on bail. It is stated that, since 24.6.2015, after

the judgment, the accused is again in jail. It is argued that, when the accused was on bail, he did not misuse the liberty and thus, he may be released on bail.

3. Against this, the learned A.P.P. strongly resisted the request for bail. According to him, the evidence of the prosecutrix available on record shows that, she was threatened with her life and with the life of her children and was forced to concede to forcible intercourse and the doctor found various injuries on the person of the accused, which were possible when forcibly such offence is committed. The learned A.P.P. referred to the evidence that the C.A. report recorded semen stains on the inner clothes of the accused.

4. Going through the material available, prima facie it needs to be observed that, in the present matter, there is evidence available of the prosecutrix recorded with help of the interpreter as the prosecutrix, understands and speaks only Pawara dialect. She has made allegations of forcible rape on her by the accused in the absence of her husband. Her evidence is corroborated by her husband to whom she immediately told the incident after the husband returned. The learned counsel for the applicant, no doubt, is arguing that the employer and the Driver,

who had also come with the husband, have not been examined. However, prima facie the evidence of the prosecutrix, supported by her husband and other circumstantial evidence, shows that it cannot be stated that the judgment of conviction for offence under Section 376 is baseless and that there are no reasons available. The prosecutrix was a mother of two children and it is not clear on what basis the doctor could say that for such person also evidence of fresh penetration can be found on next day if injury is not there. In such matters, it does happen that the prosecutrix or her relatives are unable to immediately decide if to go to police. Delay as such, by itself is not material. Looking to the nature of offence, which is serious, and the fact that such serious allegations have been made by a rural rustic woman against the applicant - accused and no enmity is shown, it would not be appropriate to grant bail in this matter.

5. The criminal Application is rejected. Hearing of the appeal, however is expedited.

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