

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

6 CRIMINAL APPLICATION NO. 4441 OF 2016

BANDU RAMKISHAN @ BHUMA PUSNAKE

VERSUS

THE STATE OF MAHARASHTRA.

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Mr. A.B.Shinde, Advocate for Applicant.

Mr. N.B.Patil, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 23rd SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 101/2015 registered at Kinwat police station, Dist. Nanded for the offences punishable u/ss 3376 (2) (I), 506 of the Indian Penal Code and u/ss 3 and 6 of the Protection of Children from Sexual Offences Act, by this application is praying for releasing him on bail after filing of the charge sheet.

2. Heard learned counsel for the applicant. He argued that the F.I.R. of the prosecutrix as well as the statement of the mother of the prosecutrix prima facie shows that there was consent of the prosecutrix to the alleged act.

The learned counsel further argued that after completion of the investigation, the charge sheet will be filed and the trial will take its own time. The learned counsel submitted that further pre-trial detention is, therefore, not warranted.

3. The learned A.P.P. opposed the application.

4. Perusal of the F.I.R. lodged by the prosecutrix, so also the bonafide certificate issued by the school where the prosecutrix takes education, goes to show that at the time of alleged incident of rape on her, the prosecutrix was about 14 years of age.

5. The averments in the F.I.R. are to the effect that 7 months prior to the lodging F.I.R., in night hours when the prosecutrix had gone out of the house for urinating, the applicant committed rape on her after threatening to kill her. Thereafter, according to the prosecutrix, the applicant repeatedly committed rape on her by threatening to kill her. She became pregnant and then the applicant promised to marry her. The prosecutrix further reported that then the applicant refused to marry her and, therefore, she lodged report.

6. The statement of the mother of the prosecutrix referred to by the learned counsel for the applicant reveals that the prosecutrix has delivered a child. It is reported by the learned counsel for the applicant that as yet report of DNA finger printing test is not filed by the prosecution before the

concerned Court.

7. The charge sheet reveals that the prosecutrix had not attained the age of consent. She was just 14 years of age at the time of the alleged incident. The averments in the F.I.R. are to the effect that the applicant had committed rape repeatedly on the prosecutrix making her pregnant. This offence is punishable u/s 376 (2) (N) of the Indian Penal Code and the punishment prescribed can be a life imprisonment which runs for remainder of the natural life of the applicant.

8. Considering the fact that the charge sheet reflects that the applicant had caused pregnancy of the prosecutrix and consequent birth of a child and that the prosecutrix is a minor female child, no case for bail is made out. Hence, the following order.

(i) The Criminal Application stands rejected.

[A.M.BADAR, J.]