

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

**7 CRIMINAL APPLICATION NO. 4948 OF 2016
WITH
APPLN/4959/2016
WITH
APPLN/4960/2016**

**PANDURANG S/O DUNDA DHANDE
& ORS.**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. R.K.Temkar, Advocate for Applicants.

Mr. S.D.Kaldate, 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 Pandurang s/o Dunda Dhande in Criminal Application No. 4948/2016, the applicant Madhukar s/o Dunda Dhande in Criminal Application No. 4959/2016 and the applicant Dunda s/o Laxman Dhande in Criminal Application No. 4960/2016 are accused in Crime No. 52/2016 registered at Rajur police station, Tq. Akole, Dist. Ahmednagar for the offences punishable u/ss 376(D), 366, 344, 323, 504, 506

read with 34 of the Indian Penal Code, by these applications are seeking their release on bail during pendency of the trial. The applicants Pandurang Dhande and Madhukar Dhande are sons of applicant Dunda Dhande.

2. Heard the learned counsel for applicants/accused. He argued that the prosecutrix is legally wedded wife of applicant Madhukar Dhande. He drew my attention to the notarized agreement of married life between applicant Madhukar Dhande and the prosecutrix reflecting that they both married on 01/04/2016. The learned counsel further drew my attention to the papers of medical examination as well as pre-natal care of the prosecutrix maintained at the Primary Health Centre [for short, 'P.H.C.'], Ladegaon and submitted that because of this wedlock, the prosecutrix became pregnant and applicant Madhukar Dhande had taken her to the P.H.C., Ladegaon for pre-natal care. The learned counsel further drew my attention to the name of the prosecutrix recorded in P.H.C. showing the name of her husband as Madhukar Dhande. The learned counsel further argued that the applicants and the prosecutrix belong to different casts. The prosecutrix was spending happy married life with her husband Madhukar Dhande, but while returning from P.H.C. on 09/06/2016 after medical examination of the prosecutrix, her father abducted her and then took her custody. Thereafter, false report is lodged by the prosecutrix under influence of her father on 23/07/2016.

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

contending that there are specific allegations against the accused persons and that the prosecutrix was kidnapped by them.

4. Perused the papers of investigation including the F.I.R. lodged by the prosecutrix on 23/07/2016. It is not in dispute that the prosecutrix is a matured female of 21 years of age. She as well as applicant Madhukar Dhande are residents of village Ambewangan in Akole Taluka of Ahmednagar district.

5. The prosecutrix averred that when she was going to the grocery shop for purchasing articles in October, 2015, the applicant Madhukar Dhande accosted her at about 10.00 – 11.00 a.m. and by pressing her mouth, took her in the forest area behind the house and committed rape on her. The prosecutrix further averred that then Madhukar Dhande abducted her and confined her in his house for 5 – 6 days, where he had repeatedly committed rape on her. According to the prosecutrix, then applicant Madhukar Dhande took her to Khadwali village of Thane and kept her at his friend's house. Then she was taken to Shivajinagar area of Pune and thereafter the couple returned to the house of one Shelke at village Khadwali. Then the applicant Madhukar Dhande took her to the room of Akash at Chetana Colony, Ahmednagar. She was then brought back to his house at Ambegavan. According to the prosecutrix, she was raped by the applicant Madhukar Dhande at those places by threatening to kill her. She has further alleged that she was then taken to one

Advocate. The prosecutrix further alleged that father of Madhukar named Dunda Dhande had also committed rape on her on 4 – 5 occasions. Other accused persons abused and threatened her.

6. Though it is not a place to comment on merits of the prosecution case, but at this stage, it will be appropriate to take note of the fact that the prosecutrix, who happens to be the matured and adult woman is asking us to believe that the applicant Madhukar Dhande had taken her to various places and raped her by threatening her. There were tons of opportunities with the prosecutrix to extricate herself from the clutches of applicant Madhukar Dhande.

7. It is seen that applicant Madhukar Dhande and the prosecutrix have gone before the Notary for preparing the document of contract of their married life. This document shows that they married on 01/04/2016. The documents placed with the application show that after becoming pregnant because of the wedlock, the applicant Madhukar Dhande took the prosecutrix to the P.H.C. for pre-natal care. The name of the prosecutrix is recorded as Prema Madhukar Dhande in the P.H.C. All this *prima facie* goes to point out a case of consensual sex and that too after marriage by the prosecutrix with the applicant Madhukar Dhande. It appears that thereafter something went wrong for lodging report by the prosecutrix.

8. Be that as it may, major part of the investigation

seems to be over. Considering this nature of the evidence against the applicants/accused, their further pre-trial detention is not warranted. Hence, the following order.

(i) All the Criminal Applications are allowed.

(ii) The applicant Pandurang s/o Dunda Dhande in Criminal Application No. 4948/2016, the applicant Madhukar s/o Dunda Dhande in Criminal Application No. 4959/2016 and the applicant Dunda s/o Laxman Dhande in Criminal Application No. 4960/2016 in Crime No. 52/2016 registered at Rajur police station, Tq. Akole, Dist. Ahmednagar for the offences punishable u/ss 376(D),366,344,323,504,506 read with 34 of the Indian Penal Code be released on bail on executing P.R. Bond of Rs. 20,000/- [Rupees Twenty Thousand] each and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicants shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicants shall not tamper the evidence of the prosecution.

(v) The applicants shall co-operate the trial Court in

expeditious disposal of the trial against them in the event of filing of the charge sheet against them.

9. All the Criminal Applications stand disposed of.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4948...2016