

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

**924 CRIMINAL APPLICATION NO. 5123 OF 2016**

**MANGESH S/O SHRICHAND RATHOD**

**VERSUS**

**THE STATE OF MAHARASHTRA**

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Ms. M.R.Dahat, Advocate for Applicant.

Mrs. V.N.Patil (Jadhav), A.P.P. for Resp. – State.

Mr. B.V.Thombre, Advocate for R – 2 – informant.

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**CORAM : A.M.BADAR, J.**

**DATE : 1<sup>st</sup> OCTOBER, 2016**

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**PER COURT :**

1. The applicant/accused in Crime No. I-155/2016 registered at Karmad police station, Dist. Aurangabad for the offence punishable u/s 354-B of the Indian Penal Code, by this application is seeking pre-arrest bail.

2. Heard the learned counsel for the applicant/accused. By taking me through the F.I.R., the learned counsel argued that even if the entire contents of the F.I.R. are accepted as it is, then also no offence of non bailable nature is disclosed and, therefore, considering the past enmity

and civil dispute between the parties, possibility of false implication of the applicant in the crime in question can not be ruled out. The learned counsel took me through the annexures to the application to point out pendency of civil dispute between the parties as well as lodging of the complaints by both the parties against each other in respect of the field property as well as on other counts.

3. The learned A.P.P. opposed the application by contending that the statement of informant is well corroborated by injuries suffered by her in the incident in question. The learned A.P.P. drew my attention to the statement of Kaushalyabai – mother-in-law of the informant and submitted that perusal of the statement of Kaushalyabai goes to show that the act was with an intention to disrobe the informant.

4. I have extensively heard the learned counsel appearing for the informant. The learned counsel argued that use of criminal force and causing of 3 injuries on the person of the informant is *prima facie* disclosing the ingredients of the offence punishable u/s 354-B of the Indian Penal Code. He submitted that the informant suffered a fall in the incident and the applicant continued his act of outraging her modesty and this chain of incidents, according to the learned counsel for the informant, *prima facie* shows that the act was with an intention to disrobe the informant and, therefore, ingredients of Section 354-B of the Indian Penal Code are satisfied. The learned counsel for the informant further argued that in the

case in hand, the police officials are not properly investigating the crime. Though the law mandates that statement of the victim of sexual offence is required to be recorded by a lady police officer, statement of the informant was recorded by a male police officer and accordingly the crime in question was registered. Therefore, the informant could not disclose the incident in detail to the police officer. It is further argued that the offence is not booked under relevant sections of the Indian Penal Code though the F.I.R. discloses commission of some other non bailable offence.

5. The learned counsel for the informant further argued that the applicant is a habitual offender involved in commission of at least 9 offences. By producing the chart with reply affidavit along with the documents annexed to, the same is pressed in service to buttress this contention. The learned counsel further argued that the report of the non cognizable case filed by Bebitai is subsequent to the F.I.R. lodged by the informant. The F.I.R. in question is lodged at about 7.00 p.m. on 15/08/2016 whereas the report of Bebitai is at about 10.33 p.m. on that day. It was lodged only as a counter blast to the F.I.R. lodged by the informant.

6. The learned counsel for the informant further argued that the applicant was not having any authority to enter in the field G.No. 78. He submitted that the applicant has committed breach of interim orders passed by the civil Court by causing his unauthorized entry in the field and then committed the crime in question. Therefore, in submission of

the learned counsel for the informant, considering the degree of criminality shown by the applicant, he is not entitled for pre-arrest bail. The learned counsel submitted that the case in hand is that of outraging the modesty of a woman, which is a serious offence. He further argued that even after registration of the crime in question, the applicant continued his criminal activities and, therefore, breached the condition of the interim order granted by the learned Additional Sessions Judge while releasing him on anticipatory bail. My attention is drawn to the complaint dated 23/08/2016 lodged by Sitaram Rathod, who is father-in-law of the informant, to show that the applicant is involved in commission of crime subsequent to the registration of the F.I.R.

7. I have carefully considered the rival submissions and perused the papers of investigation produced by the learned A.P.P. I have gone through the reply affidavit filed by the informant with the annexures thereof.

8. The crime in question is registered on the basis of the report lodged by Yogita Laxmikant Rathod on 15/08/2016 at about 19.02 hrs. with police station Karmad. As per the prosecution case, the incident took place at the field located at Naigavan. As per the F.I.R., the informant was doing weeding operation in the eastern corner of the field, whereas her mother-in-law and sister-in-law were doing same operations in the western side of the field. The informant alleged that at that time, the present applicant, who is resident of Aurangabad, came in the field, questioned her as to why she

does not speak with him. With evil intention, the applicant caught hold of hand of the informant and when she raised a hue and cry, the applicant assaulted her and caused injuries on her hands by means of a blade. The informant averred that hearing the noise, her mother-in-law Kaushalyabai and sister-in-law Sonia came on the spot. The applicant then pushed them and ran away from the spot.

9. The offence is registered u/s 354-B of the Indian Penal Code, which reads thus,

*“ Assault or use of criminal force to woman with intent to disrobe - Any man who assaults or uses criminal force to any woman or abets such as with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. ”*

10. The Investigating Officer has recorded statement of Kaushalyabai as well as Sonia, who reached the spot soon after the incident. Kaushalyabai has stated that when she reached the spot, she saw the applicant teasing the informant while the informant had suffered fall. She further stated that then the applicant caused injuries to the informant by means of a blade. Same is the version of Sonia.

11. Record of investigation shows that during investigation, statement of the informant as well as Kaushlyabai and Sonia came to be recorded by the learned Judicial Magistrate First Class, Aurangabad u/s 164 of the Code of Criminal Procedure. Even if it is assumed that it was not proper on the part of the male police officer to record the statement of the victim of the sexual offence, then also one will have to keep in mind that the informant as well as witnesses have put-forth their version before the learned Judicial Magistrate First Class, Aurangabad. Perusal of those statements u/s 164 of the Code of Criminal Procedure goes to show that nothing more than what was stated by the informant before the police officer is stated by her to the learned Judicial Magistrate First Class. It will also have to be noted that the informant has filed affidavit in reply to put-forth her version before this Court. Careful perusal of the reply affidavit of the informant does not show anything on this aspect to infer that she was required to suppress relevant material from the police officer, who recorded her F.I.R. In reply affidavit, even the facts constituting the offence are not mentioned. The informant had an opportunity to disclosed what more she suffered in the incident which could not be disclosed to the police.

12. On this back-drop, by keeping in mind the fact that even a female child of a tender age has modesty, even though she may not have sense of shame or sex, let us consider the surrounding circumstances. This is so, because a man may lie but circumstances can not. Three witnesses,

including the victim are consistently stating that the victim had suffered injuries by a blade (probably a shaving blade) inflicted by the present applicant. Injury certificate of the informant is placed on record. Perusal of the injury certificate issued by the Govt. hospital at Aurangabad shows that the informant had suffered injuries in the nature of abrasions. This, *prima facie*, is not in tune with the version of the informant and that of the witnesses regarding infliction of injury by a blade. The injuries are simple in nature.

13. Reply affidavit contains chart of offences registered against the present applicant, but perusal of annexures to the affidavit shows that those are registered not on the basis of the reports lodged by the public at large, but at the instance of the prosecuting party.

14. On this back-drop, it is apparent from the record that the parties are at logger heads with each other because of the dispute over the field property at village Naigavan. The same is claimed to have been purchased by the uncle of the applicant as well as Kaushalyabai – mother-in-law of the informant. Kaushalyabai has filed a Civil Suit bearing R.C.S. No. 562/2016 against the present applicant as well as his relatives including his uncle Ramchandra Rathod. The claim in the said Suit is for perpetual injunction restraining the defendants from interfering in the possession of Kaushalyabai over the disputed agricultural land. It is seen that there is no order of temporary injunction in favour of the plaintiff, but what is operating is the order of status-quo. Therefore, no

substance is found in the argument of the learned counsel for the informant that there was a trespass over the field by the applicant.

15. Perusal of the papers of investigation as well as the documents placed on record shows that even the present applicant had lodged 2 complaints dated 04/07/2016 and 17/07/2016 with Police Station Karmad with averments that Kaushlyabai and Shrichand Rathod were damaging standing crop in the disputed field and they both threatened the applicant of lodging false complaint against him. These documents, which are *ante litem motam* in nature, are relevant while deciding the present application in a matter where both parties are on extremely inimical terms. These documents shows possibility of false implication of the applicant.

16. Even on the day of incident, there are counter reports against each other by both the parties. Though subsequent in time, the report lodged by mother of the applicant indicates that she was threatened with consequences of booking her sons in non bailable offence by the prosecuting party.

17. To crown this all, even if entire papers of investigation are considered in proper perspective, there is no *prima facie* evidence to show that criminal force was used by the applicant with an intention to disrobe or to compel the informant to be naked.

18. Averments of the informant to the effect that record shows commission of non bailable offence u/s 324 of the Indian Penal Code also holds no water. As stated in foregoing paragraphs, though it is averred that the assault is by means of a blade, the injuries are in the nature of abrasions which are simple in nature.. Therefore, *prima facie*, there is no evidence even for the offence punishable u/s 324 of the Indian Penal Code which is in respect of voluntarily causing hurt by dangerous weapon. Apart from this, a shaving blade can not be considered as a dangerous weapon in such a situation viewed from the nature of injuries suffered by the informant. Perusal of record of the investigation *prima facie* does not show commission of any non bailable offence by the applicant.

19. The so called report of the father-in-law of the informant does not disclose any breach of interim order or tampering of the prosecution evidence. Allegations made in that report appear to be outcome of enmity between the parties.

20. To sum up, the applicant, who is a student prosecuting his career, deserves to be protected because arrest brings humiliation not only to the applicant but also to his family members also. Arrest can cause damage to the career of the applicant, who is appearing for competitive examinations. Averments in papers of investigation does not warrant custodial interrogation. Hence, the following order.

(i) The application is allowed.

(ii) The interim Order dated 15/09/2016 passed by this Court is confirmed on same terms and conditions.

(iii) In addition, applicant Mangesh s/o Shrichand Rathod shall attend the concerned police station on 05/10/2016 in between 11.00 a.m. and 1.00 p.m. and he should co-operate the Investigating Officer in the investigation of the crime in question.

**[A.M.BADAR, J.]**