

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

Criminal Application No. 5557 of 2016

District : Aurangabad

1. Dnyaneshwar s/o. Bhima
@ Bhimrao Pawar,
Age : 23 years,
Occupation : Labour,
R/o. Chenduphad,
Taluka : Vaijapur,
District : Aurangabad.

2. Suraj @ Suresh s/o. Bhima
@ Bhimrao Pawar,
Age : 20 years,
Occupation : Labour,
R/o. Chenduphad,
Taluka : Vaijapur,
District : Aurangabad.

.. Applicants.

versus

The State of Maharashtra.

.. Respondent.

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*Mr. Shaikh Mazhar A. Jahagirdar, Advocate, for
applicants.*

*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 14TH OCTOBER 2016

ORAL ORDER:

The learned Counsel for applicants, at the

outset, submits that he is not pressing the application so far as applicant no.1 Dnyaneshwar s/o. Bhima @ Bhimrao Pawar is concerned.

2. Hence, the Application qua applicant no.1 Dnyaneshwar s/o. Bhima @ Bhimrao Pawar is dismissed as withdrawn.

3. Applicant no.2 Suraj @ Suresh s/o. Bhima @ Bhimrao Pawar, by this application, is seeking his release on bail in Crime No. I-12/2016 registered with Virgaon Police Station, Taluka Vaijapur, District Aurangabad, for offences punishable under Section 376(1) of the Indian Penal Code and under Sections 3, 4, 5(j)(ii),(l),(q), 6 and 8 of the Protection of Children From Sexual Offences Act, 2012.

4. Heard the learned Counsel appearing for the applicant / accused. He argued that applicant no.2 Suraj @ Suresh Pawar is roped in the crime in question only because his brother has refused to marry the prosecutrix. My attention was drawn to the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure as well as that of Rahul s/o. Dattu Salunke to submit that possibility of false implication of the applicant in the crime in question is there and therefore the applicant is entitled for bail.

5. The learned Addl. Public Prosecutor opposed the application by contending that statement of the prosecutrix shows complicity of the present applicant in the crime in question and same version is maintained by her in her statement under Section 164 of the Cr.P.C.

6. Considered the rival submissions and perused the charge-sheet. In her FIR, the prosecutrix who is reported to be 17 years of age, had disclosed to the Police that in June 2015, co-accused Dnyaneshwar Pawar committed rape on her with a promise to marry her. The prosecutrix further reported that co-accused Dnyaneshwar Pawar continued the act frequently impregnating her. The prosecutrix further stated that in the month of August 2015, on one day, applicant no.2 Suraj @ Suresh Pawar, who is brother of co-accused Dnyaneshwar Pawar, came to her house with her brother Rahul and slept at her house. Then at about 07.00 a.m. of the next day, applicant no.2 Suraj @ Suresh Pawar took her in the field of Banti Pawar and there he had committed rape on her. According to the prosecutrix, subsequently her pregnancy was confirmed by the Doctor and then along with her relatives, she went to the house of co-accused Dnyaneshwar Pawar as well as applicant no.2 Suraj @ Suresh Pawar. There, mother of the applicant assaulted her and co-accused Dnyaneshwar Pawar

refused to marry her.

7. In her statement recorded under Section 164 of the Cr.P.C., the prosecutrix has stated that the incident of rape on her by the applicant took place in her own house when she was alone.

8. Though the FIR discloses that applicant no.2 Suraj @ Suresh Pawar had been to the house of the prosecutrix with her brother Rahul and stayed there overnight at the instance of her brother Rahul, statement of Rahul - brother of the prosecutrix is conspicuously silent on this aspect. Rahul has only narrated the version of the prosecutrix as her disclosure to him.

9. In the wake of this evidence, an element of improbability crept in the prosecution case. Prima facie there is possibility of false implication of applicant no.2 Suraj @ Suresh in the crime in question as his elder brother refused to marry the prosecutrix and his mother had assaulted the prosecutrix when she and her relatives had been to their house after detection of pregnancy of the prosecutrix.

10. In the wake of nature of evidence available against applicant no.2 Suraj @ Suresh s/o. Bhima @ Bhimrao Pawar, his further pre-trial detention is not

warranted.

11. Hence, I pass the following order :-

(a) The Application is partly allowed.

(b) As aforesaid, the application to the extent of applicant no.1 Dnyaneshwar s/o. Bhima @ Bhimrao Pawar is dismissed as withdrawn.

(c) The Application to the extent of applicant no.2 Suraj @ Suresh s/o. Bhima @ Bhimrao Pawar is allowed and he is directed to be released on bail in the above crime, on his executing P.R. Bond in the sum of Rs. 20,000/- and on furnishing one or more solvent sureties of the like amount.

(c-1) As conditions of this order, applicant no.2 Suraj @ Suresh s/o. Bhima @ Bhimrao Pawar shall abide by the following directives :-

(i) Applicant no.2 Suraj @ Suresh Pawar shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) Applicant no.2 Suraj @ Suresh Pawar shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial against him.

(iii) Applicant no.2 Suraj @ Suresh Pawar shall not repeat commission of similar type of offences in future.

(d) The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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