

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6071 OF 2016

Balu Maruti Bhangare,
Age : 19 years, Occupation : Agriculture,
R/o : Deogaon, Tq: Akole,
District : Ahmednagar .. Applicant

Vs.

The State of Maharashtra .. Respondent

AND

CRIMINAL APPLICATION NO. 5998 OF 2016

Vitthal S/o Maruti Gabhale,
Age : 22 years, Occu.: Education,
R/o Shenet (Bad-kumbhwadi),
Tq. Akole, Dist. Ahmednagar .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. Joydeep Chatterji, Advocate for the applicant (6071/2016)
Mr. R.K. Temkar, Advocate for the applicant (5998/2016)
Mr. R.V. Dasalkar, APP for the respondent/State in both
Applications

CORAM : A.S. CHANDURKAR, J.
DATE : 01/12/2016

ORAL ORDER :

Heard.

2. Since both the applicants, who have been arrested on 24/6/2016 in connection with Crime No.I-42 of 2016 registered at Rajur Police Station, District –

Ahmednagar for the offences punishable under Section 376(d) of the Indian Penal Code and Section 3,4,5(g) and 6 of the Protection of Children from Sexual Offences Act, seek their release on bail under Section 439 of the Code of Criminal Procedure, these Applications are being decided by this common order.

3. As per the report dated 23/6/2016, the prosecutrix – Sindhu has stated that prior to about a month, while she was returning from school in the evening, the applicants had accosted her and had taken her behind bushes and had committed intercourse with her. On that basis, aforesaid crime came to be registered, leading to applicants' arrest.

4. It is submitted by the learned counsel for the applicants that there are various inconsistencies in the statements of the prosecutrix. Though in the FIR, it has been stated that the incident in question occurred about a month before 23/6/2016, in the supplementary statement recorded on the next day, the prosecutrix has stated that the incident in question has occurred about 2 days prior to Holi festival i.e. before three months.

5. It is then submitted that one Vithhal Bangar was related to the prosecutrix had lodged report on 21/6/2016, in which it has been stated that when the family members of the prosecutrix had been to the house of the applicant in Criminal Application No.6071 of 2016, they had been abused and assaulted. It is submitted that there is no reference to the alleged incident though an understanding was given to the said applicant that he should not repeat the same. It is further submitted that considering the fact that the entire investigation is over and chargesheet has already been filed, there is no reason to further detain the applicants in these facts.

6. The applications are opposed by the learned Additional Public Prosecutor by relying upon the statements recorded. He submits that the medical evidence alongwith statements of the parents and other family members indicate the alleged act being committed by the applicants. Considering the age of the prosecutrix, it is submitted that the applicants do not deserve to be enlarged on bail.

7. Perused the FIR as well as the documents filed alongwith the chargesheet. In the FIR, the alleged incident of rape is stated to have been committed sometime in May – 2016. In the supplementary statement recorded on the next day, it is stated that the said incident was committed about three months prior i.e. just before the Holi festival.

8. It is pertinent to note that FIR no.I-41 of 2016 has been lodged on 21/6/2016 by Vitthal Bangar in which it is stated that he alongwith his relatives had been to the house of Balu Bhangare to complain about the harassment on his part meted out to the prosecutrix. It is stated that after giving understanding to Balu, when the family members were returning back, they were assaulted. If the alleged incident is said to have occurred three months prior, then there would have been some reference in that regard in the aforesaid report which was lodged subsequently. Further, the medical report dated 23/6/2016 indicates that hymen of the prosecutrix was intact while in another medical examination conducted on same day, the hymen is said to

be ruptured. Considering the aforesaid facts and as the chargesheet has been filed, the applicants can be enlarged on bail, subject to imposing conditions.

9. In view of aforesaid discussion, the following order:-

ORDER

I) The Applications are allowed.

II) The applicants, who have been arrested in connection with Crime No.I-42 of 2016 registered at Rajur Police Station, District – Ahmednagar for the offences punishable under Section 376(d) of the Indian Penal Code and Section 3, 4, 5(g) and 6 of the Protection of Children from Sexual Offences Act, are directed to be released on bail, upon executing P.R. bonds of Rs.15,000/- (Rs. Fifteen Thousand) with one surety in the like amount, by each of them.

III) The applicants shall not enter the limits of Akole Tehsil, District – Ahmednagar, till the completion of trial.

IV) They shall furnish their addresses of the places, where they propose to reside during the pendency of the trial. Such addresses should be furnished to the Investigating Officer as well as before the learned Sessions Judge.

V) No steps shall be taken by them to coerce the prosecution witnesses.

10. The observations made in this order are only for deciding the present Applications.

11. Criminal Applications are accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/