

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

CRIMINAL APPLICATION NO.6973 OF 2015

Nitin s/o Ramesh Sawant,
Age 25 years, Occu. Labourer,
R/o Undegaon, Taluka Gangakhed,
District Parbhani, at present
residing at Durdi, Taluka and
District Parbhani

.. Applicant

Versus

The State of Maharashtra,
through the Police Inspector,
Parbhani (Rural) Police Station
Taluka and District Parbhani

.. Respondent

Mr A.A. Mukhedkar, Advocate for applicant
Mr S.Y. Mahajan, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 29th January 2016

PER COURT

Heard learned Counsel for the applicant and learned A.P.P.

2. The applicant is seeking regular bail in Crime No.117/2015 registered on 23rd October 2015 at Parbhani (Rural) Police Station, District Parbhani, for the offences punishable under Sections 376 (1), 323, 504 and 506 of Indian Penal Code.

3. The prosecution case against the applicant is that the applicant has raped one Meenakshi, the sister-in-law of one Dhammapal, who is eye witness to the incident in question. It is claimed that Dhammapal, in the above referred crime has assaulted the present applicant.

4. In the above referred background, learned Counsel for the applicant Mr Mukhedkar would urge that the story as is sought to be espoused by the prosecution is false. According to him, the investigation in the matter is complete and charge-sheet is already filed, as such, there is no necessity of custodial interrogation/detention of the applicant. According to him, the evidence as is brought on record even if treated to be true against the applicant, still there is hardly any material to connect/infer that the applicant has committed the crime under Section 376 (1) of Indian Penal Code. So as to substantiate his contention and to espouse the submission that the applicant is falsely implicated in the crime in question, he would urge that Crime No.115/2015 came to be registered against Dhammapal pursuant to a complaint dated 21st October 2015 given by present applicant on the same day i.e. October 21st 2015. In the said crime, it is alleged by the applicant that Dhammapal has assaulted the present applicant, resulting into registration of crime punishable under Section 326 of the Indian Penal Code. He would then urge that in Crime No.117/2015 the incident of rape as is claimed to have took place on 19th October 2015, for which F.I.R. was lodged on 23rd October 2015. He submits that there is no reason for delay for lodging the said crime. According to him, so as to give counter blast to the F.I.R. in Crime No.115/2015 at the behest of applicant against Dhammapal, the applicant is falsely roped in present crime.

5. Apart from above, learned Counsel for applicant would urge that perusal of the entire investigation papers/charge-sheet would reveal that two persons are claimed to be eye witnesses i.e. Dhammapal and

Hanuman Chopde. According to him, the statement of Dhammapal is required to be ignored in the above referred background of implication and so far as statement of Hanuman Chopde is concerned, the same depicts that he is not an eye witness to the incident. He would further urge that even the medical evidence and the seizure of the clothes of applicant and the prosecutrix do not depict that the applicant has committed the crime under Section 376 (1) of Indian Penal Code.

6. Learned A.P.P. opposed the application on the ground that there are two eye witnesses to the incident, viz. Dhammapal and Hanuman Chopde. He would then urge that since the incident is witnessed by above referred two witnesses and the testimony of the prosecutrix is sufficient for conviction of the applicant and prayed for rejection of application.

7. With the assistance, I have scanned the charge-sheet. It is not in dispute that on 21st October 2015, at the behest of applicant, Crime No.115/2015 is registered against Dhammapal, the brother-in-law of the complainant Meenakshi in Crime No.117/2015 for an offence punishable under Section 326 of Indian Penal Code. Apart from above, there is unexplained delay of four days in lodging the F.I.R. in Crime No.117/2015. Perusal of medical evidence depicts that no injury could be noticed on the body of the complainant Meenakshi nor the evidence depicts of sexual assault, as claimed. Apart from above, it is required to be noted that false implication of applicant cannot be ruled out in view of earlier Crime No.115/2015 registered at the behest of applicant against said Dhammapal.

8. As the investigation in the matter is complete and charge-sheet is already filed, further detention of the applicant will be hardly any necessity.

9. In view thereof, the application stands allowed.

10. The applicant be released on bail in Crime No.117/2015 registered on 23rd October 2015 at Parbhani (Rural) Police Station, District Parbhani, for the offences punishable under Sections 376 (1), 323, 504 and 506 of Indian Penal Code, upon furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

11. The applicant shall not tamper with the evidence.

(N.W. SAMBRE, J.)

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