

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.618 OF 2016

Kailash Laxman Sambre ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Ms.Vrishali R. Raje, Advocate for the Applicant.

Mr.S.H.Yadav, APP for the Respondent/State.

Mr.A.V.Salunkhe, PSI, Wada Police Station, Palghar is present.

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CORAM : P. N. DESHMUKH J.

DATED : 14th JUNE 2016.

P.C.

1. This application is filed by accused involved in Crime No.I-121 of 2015 registered by Wada Police Station for the offences punishable under Sections 376(1), 341 of the Indian Penal Code. The learned counsel for the applicant has submitted that the applicant is falsely involved by the prosecutrix. According to the learned counsel for the applicant there is no injury found on the person of the prosecutrix, though, she is examined and, it is the case of prosecutrix that the alleged incident of rape is committed on a rocky place. She, however, submitted that the conduct of prosecutrix itself is doubtful, as she has not raised shout, and, in fact, only when some persons arrived on the spot, with the fear of her identity having involved in such act,

prosecutrix raised shouts by falsely involving the applicant. It is further case of the applicant that, in fact, the prosecutrix after the incident rushed to her house, and though had met her husband at around 10 p.m., and informed him about the alleged incident, no immediate report came to be lodged. Lastly, it is contended that in the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure, there are material improvements with reference to her raising shouts on her being apprehended by the accused.

2. The learned Additional Public Prosecutor opposed the bail application on the ground that there is direct evidence and there are three eye witnesses involving applicant. It is also contended that trial has already commenced.

3. Perused the documents along with the application, wherefrom it appears that the incident occurred on 31/08/2015 after 9.00 p.m., when prosecutrix was proceeding alone by the road, and is stated to have been apprehended by accused, who thereafter took her in the bushes adjoining to the road by dragging and after making her fall on the ground sexually assaulted her. It is further alleged in the report that listening to the shouts raised by the prosecutrix villagers namely Nitesh, Vijay and Ankush, who were proceeding by the road, arrived on the spot and on seeing them applicant ran away.

4. On considering contents of aforesaid report, there appears substance in the contention raised on behalf of applicant that the prosecutrix did not raise shouts on her apprehension, who appears to have subsequently raised shouts upon which above-named person arrived on the spot. From the statement recorded under Section 164 of the Code of Criminal Procedure it does appear that there is material improvement by the prosecutrix mentioned therein about her raising shouts on her apprehension. Similarly, from the medical report on record it appears that prosecutrix is examined on 03/09/2015, and it is clearly mentioned therein that, no any injury was seen on her person, in spite of prosecutrix having been ravished at the hands of the applicant on her falling on the ground. There is no sufficient reason put forth by the prosecutrix for lodging delayed FIR on 01/09/2015 at around 6.00 p.m. of an incident occurred on 31/08/2015 at 9.00 p.m.

5. Having considering above said facts and age of prosecutrix about 42 years having one married son and daughter, the application is liable to be allowed. Hence, following order.

- (i) Applicant Kailash Laxman Sambare shall be released on bail on his executing personal bond in the sum of Rs.25,000/- with one or two surety to make the surety amount.

- (ii) The applicant while on bail shall mark his presence with Wada Police Station on 1st day of each month during pendency of the trial and shall attend the trial Court on fixed dates.

(P. N. DESHMUKH J.)