

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1119 OF 2016

Chandrakant Bharat WaghmareApplicant

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL BAIL APPLICATION NO. 1120 OF 2016

Ravi Bharat WaghmareApplicant

V/s.

The State of MaharashtraRespondent

Mr. Sanjay P. Shinde Advocate for Applicant.
Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 22, 2016.

PC :

1) Heard. These are applications under Section 439 of the Code of Criminal Procedure, 1973. Applicants herein are charge-sheeted in crime no. 432 of 2015 registered at Sarkarwada Police Station for offence punishable under sections 363, 354, 342, 376 (2) (i) (j), 376 (d), 323, 504, 506 r/w 34 of

the Indian Penal Code and under Section 4 of the Protection of the Children from Sexual Offences Act, 2012. Applicants herein are arrested on 15/12/2015.

2) Perused the records. Heard the learned counsel for the Applicant.

3) It is the case of the prosecution that on 15/12/2015, the victim who happens to be a minor and is rag picker, lodged a report at the police station, alleging therein that on 14/12/2015, at about 2.00 p.m., she along with her maternal aunt Vanita Palwe were collecting the crap and rags. After selling the same, they were on the footpath of the Civil Hospital. At about 10.00 p.m., they were sleeping on the footpath of the Civil Hospital. She was sleeping in between her father and the maternal aunt. An hour later, she realized that the blanket of her body was being pulled away. When she woke, she saw the Applicant in Criminal Bail Application No. 1119 of 2016 before her. He asked them to run away from that place. He had threatened to kill her father. Her maternal aunt had also woke up and thereafter they left the spot and started running away. He informed them that he would not assault them. He offered to treat them with food and had taken them to the general toilet on the road. Both the Applicants were in the toilet. They had pulled down the shutters.

They had caught hold of maternal aunt of the victim. Her maternal aunt was locked up in one of the toilets and thereafter, the victim was ravished by the Applicants.

4) On the basis of her report, crime was registered and investigation was set in motion and charge-sheeted is filed.

5) The learned counsel for the Applicants has placed reliance upon the medical examination report of the victim which shows the history as :

“The history of assault on 14/12/2015 at 11.00 p.m., an attempt to rape by male aged 28 years. No external injuries found, hymen intact.”

6) The learned counsel for the Applicants submits that the Applicants cannot be charge-sheeted for offence punishable under section 376 of the Indian Penal Code as there is no *prima facie* evidence of rape and therefore, according to the learned counsel, Applicants deserve to be enlarged on bail.

7) The learned APP, at this juncture submits that the offence is heinous in as much as it would indicate that an offence punishable under section 376 r/w 511 of the Indian Penal Code has been made out.

8) The learned counsel for the Applicants submits that the Applicants were under the influence of alcohol and therefore, did not realize the consequences

of their act. It is submitted that both the Applicants are married and have a family of their own and that as on today, investigation is completed and charge-sheet is filed. Hence, the Applicants deserve to be enlarged on bail.

9) The learned APP has submitted that the trial has commenced. Charge is framed against the Applicants on 23/08/2016. The next stage is under Section 294 of the Code of Criminal Procedure, 1973.

10) Taking into consideration the background of the case, the nature of allegations, more particularly, the fact that the victim and her family belong to an economic backward class, below poverty line and they are living by collecting scraps and rags. They were sleeping on the footpath and the Applicants have taken advantage of their status. There was no reason for the Applicants to drive away victim and her family from the footpath where they were sleeping. The victim and her family did not have shelter on their head. It cannot be said that the Applicants would have a right to take advantage of the social status of the victim and her family. It would leave a hazardous impact on the mind of the tender girl forever and in such situation, the Applicants do not deserve to be enlarged on bail.

11) It is made clear that observations made herein above are prima facie in

nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

12) Applications stand rejected.

(SMT. SADHANA S. JADHAV, J.)