

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1465 OF 2016

Vishwanath Alias Vishnu Tarachand Pawar	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Shambhuraje V. Deshmukh, Advocate for the applicant.
Mr. Vinod Chate, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 21st September, 2016.

P.C.

1. Heard. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No.264/2016 registered at Satra Taluka Police Station for the offences punishable under Sections 376 and 506 of the IPC.

2. It is the case of the prosecution that on 12.7.2016, the prosecutrix lodged a report at the police station alleging therein that she is working as a labour and is engaged by the applicant. She goes for cutting sugarcane along with her husband and her children. That the applicant had given an advance of Rs.70,000/- to the complainant and her husband. It is alleged that they were directed to go to Ajinkyatara Sugarcane Factory,

Chinchnor, Taluka Koregaon and then to a hut. That one day the applicant, who was working as a labour contractor of the said sugar factory, had entered into the hut and had ravished her against her wish. That he had continued to engage into the said act intermittently. He had also informed her that in the eventuality that she co-operates, he would waive the advance of Rs.70,000/- which was given to her husband. That she had conceived pregnancy. The applicant had taken her to a doctor for undergoing medical termination of the pregnancy, but the doctor had advised her that since the pregnancy was at an advanced stage, it would not be appropriate to abort the said pregnancy. It is alleged that on 4.7.2016, he had coerced the complainant to accompany him to the hospital for medical termination of the pregnancy. He had threatened her of dire consequences and therefore, she was constrained to inform about it to her mother-in-law and hence they had lodged the FIR in that respect.

3. The applicant herein had filed an application seeking the relief under Section 438 of Cr.P.C. before the Court of Addl. Sessions Judge at Satara. By an order dated 25.7.2016, the applicant seeking pre-arrest bail was rejected. The present application seeking pre-arrest bail is filed on 21.8.2016. Along with the present application, the learned counsel for the

applicant has placed on record an affidavit sworn in by the complainant before the Sessions Court at Satara on 12.8.2016 along with a notarized document with the photographs of the complainant which was sworn on 12.8.2016. On the first day of the hearing of the present application i.e. on 23.8.2016, this Court had observed that the applicant had indulged into tampering of evidence and, therefore, a notice was issued to the complainant as to why she should not be prosecuted for the offence punishable under Section 193 of the IPC.

4. Today, at the threshold, the learned counsel for the applicant submits that a notice has been issued to the complainant and her close relative has informed the applicant that she is likely to engage an advocate and the same instructions were given to the learned counsel appearing in the application.

5. The complainant belongs to an economically backward class. She is working as a labour. In the meanwhile, the investigating officer has recorded the statement of the complainant on 26.8.2016, wherein the complainant has voluntarily disclosed that after registration of the FIR on 9.8.2016, the applicant and his associates had been to her house and had

initially requested her to withdraw the report or file an affidavit exonerating him. On denial, she and her family were threatened of dire consequences. In order to ensure safety and security of the entire family, her mother in law had advised her to accompany the applicant to the Court. She was taken to the Sessions Court at Satara where an affidavit was drafted by an Advocate whom she did not know. Her photographs were taken and affixed on a plain paper and she was asked to sign the said documents. She has studied only upto 4th Std. And it appears that she is only well-versed with signing her name and nothing beyond that. She has also informed the police that the applicant and his associate had taken her to the Sessions Court and then thereafter she was dropped at her own village. She has also stated that in order to enable her and her family members to go to Satara, the applicant had provided a jeep and she does not know anything beyond that. The papers of investigation will show that her statement under Section 164 of Cr.P.C. was recorded on 28.7.2016 i.e. prior to the filing of the present application. In the statement under Section 164 of Cr.P.C. she has deposed inconsonance with the first information report. The statement was recorded before the 5th Judicial Magistrate, First Class, Satara. It is in these circumstances that it would not be appropriate to proceed with the notice issued to the complainant and hence the notice is recalled. The

applicant has indulged into tampering of the evidence and threatening the complainant to file an affidavit in his favour. The allegations under Section 376 of the IPC are serious in nature.

6. The learned counsel for the applicant has submitted that the complainant is a married woman. She had maintained silence for a long period and, therefore, the possibility that it was consensual relationship cannot be ruled out and hence the applicant deserves to be protected by way of pre-arrest bail.

7. At this stage, it would be necessary to also consider the conduct of the accused under Section 8 of the Indian Evidence Act. Even after the statement of the complainant was recorded under Section 164 of Cr.P.C., the complainant was taken to the Court of Sessions and was made to file an affidavit. This would reflect upon the very honour, dignity and existence of the complainant. She would be ashamed of herself to disclose the trauma which she has undergone at the hands of the complainant. Only because the complainant belongs to economically backward class, the applicant cannot be allowed to take advantage of her position. It is clear that the applicant has committed the offence as alleged against him. Hence,

he dies not deserve the relief under Section 438 of Cr.P.C.

8. The application being sans merits, deserves to be rejected.

9. These observations are restricted to an application under Section 438 of Cr.P.C.

(SMT.SADHANA S.JADHAV, J.)