

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO.876 OF 2016

(Bhiva Domaji Chavare ..vs.. State of Maharashtra, through PSO, PS Jaripatka, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Meshram, Advocate for applicant,
Shri S.J. Kadu, Addl.P.P. for non-applicant.

CORAM : P.N. DESHMUKH, J.

DATED : 07-12-2016

Heard Shri S.S. Meshram, learned Counsel for applicant and Shri S.J. Kadu, learned Additional Public Prosecutor for non-applicant.

This application is for bail by accused involved in Crime No.346/2016 registered by Jaripatka Police Station, Nagpur, for the offence punishable under Section 376(1)(2)(N) of Indian Penal Code.

Shri S.S. Meshram, learned Counsel for applicant has submitted that prosecutrix who is niece of applicant has falsely lodged report and by referring to contents thereof has contended that though according to its contents, prosecutrix was serving in a private hospital upto 9.30 p.m., has stated that on the day of incident, applicant arrived at her house at 7.00 p.m. and committed sexual assault upon her forcibly. It is further pointed out that inspite of recording additional

statement of prosecutrix, she has not put forth any explanation on this aspect. However, it is contended that such statement is recorded only to explain delay caused in filing report. It is, therefore, contended that since the case of prosecution against applicant is doubtful from the contents of report itself, application be allowed.

Perusal of report dated 04-06-2016 reveals of incident which occurred on 02-06-2016 at 7.00 p.m. wherein it is stated that applicant caught hold of prosecutrix and on threatening her not to raise any shout indulged into physical relations with her. It is material to note that as per the report, applicant on that night stayed in the house of prosecutrix during which period he further indulged into physical relations. It is the case of prosecutrix that she is married in 2005 with one Sunil Sonekar, however, since 2008 she is residing separately from him having two children. She further states that for sometime she resided with her parents till 2015, however, thereafter as her relations with her parents were strained, she started residing separately in Jaripatka area in a rented premises where the incident is alleged to have occurred.

In the background of case of prosecution as aforesaid, additional statement of prosecutrix reveals that on the day of incident both of her children were at

the house of her mother, which appears to be apparently contradictory to her own case. So also it is no case of prosecutrix that inspite of applicant staying in a house throughout the night, any attempt was made by her to run away.

Admittedly, charge-sheet in the present crime is filed. Having considered the contents of report as well as additional statement of prosecutrix as aforesaid, application is liable to be allowed by imposing suitable conditions as per order below.

Order

- (i) Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (ii) Applicant shall mark his presence with Police Station Mankapur, District Nagpur within whose jurisdiction he is stated to be residing, quarterly on the first day of each such month pending trial.
- (iii) Applicant shall not enter jurisdiction of Jaripatka Police Station, Nagpur within whose jurisdiction prosecutrix resides.
- (iv) Applicant shall produce proof of residence and shall update the same in the event of change of residence in future.

Application is accordingly allowed.

JUDGE

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