

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

CRIMINAL APPLICATION NO. 2199 OF 2017

**YASHODABAI DNYANESHWAR JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Applicant : Mr Choudhari N. L.
APP for Respondents: Mr S M Ganachari
Advocate for Respondents : Mr Brahme Shailesh P.

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CORAM : V.K. JADHAV, J.

Dated: August 08, 2017

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PER COURT :-

1. By this application, the applicant is seeking cancellation of the bail granted to respondent nos. 2 and 3/original accused by the learned Additional Sessions Judge, Jalgaon in Criminal Bail application No.193/2017 by order dated 12.4.2017.

2. Brief facts, giving rise to the present application, are as follows :-

a] On the basis of the complaint lodged by the victim Yashodabai dated 26.3.2017 crime No.27/2017 came to be registered initially for the offence punishable under section 354(a) (I) (1), 341, 506 read with 34 of Indian

Penal Code. It has been alleged in the complaint that, respondent nos.2 and 3 and one another accused Yogesh came to the field of the victim Yashodabai, caught hold of her hairs and hand, and further given threats to her. It has been also alleged in the complaint that, those three persons had expressed that they would prefer to commit intercourse with her. During the course of the investigation, on 30.3.2017 supplementary statement of applicant victim Yashodabai came to be recorded, wherein she had disclosed that, after arrival of her mother, she disclosed to her mother that those three persons including present respondent nos. 2 and 3 had committed gang rape on her and since they had given threats to her, she had not disclosed the actual incident, but disclosed the incident in different form. Present respondent nos.2 and 3 came to be arrested by the police in connection with the said crime on 31.3.2017. On 3.4.2017 respondent nos. 2 and 3 filed Criminal Bail Application No.193/2017, for getting release on bail and the learned Additional Sessions Judge, Jalgaon, by order dated 12.4.2017 in the said Criminal Bail

Application allowed the application and released both respondent nos. 2 and 3 on bail. Hence, this application.

3. The learned counsel for the applicant submits that, the applicant victim Yashodabai was given in marriage to one Dnyaneshwar and their marriage was solemnized on 29.4.2016. After marriage she started cohabiting with her husband and parents of her husband were also residing with them. Learned counsel submits that, within 11 months of her marriage, she had faced said incident of gang-rape. On 25.3.2017 she was taken in the agricultural field by her husband on a motorbike and after leaving her there, he went to attend one marriage. Due to the threats given by respondent nos. 2 and 3 herein and other co-accused, she had not disclosed the real incident to her in-laws, however, two days after the incident her mother had come to her matrimonial home and accordingly she disclosed the real incident of gang rape committed on her by respondent nos. 2 and 3 and co-accused Yogesh.

Learned counsel submits that, learned Additional Sessions Judge has not considered this evidence and simply observed that, all accused came to be implicated in the offence of rape subsequently, and as such, possibility of false implication over some property dispute of family cannot be ruled out. Learned Additional Sessions Judge, Jalgaon within 13 days of the date of arrest of respondent nos. 2 and 3, released them on bail. Even at that time investigation was incomplete. Learned counsel submits that, during the course of investigation, statements of mother of victim as well as her in-laws and husband came to be recorded. They have fully supported the prosecution story. Learned counsel submits that, the approach of the Additional Sessions Judge, Jalgaon is very casual while releasing the applicants on bail. The applicants have not given details about the property dispute between the families nor any civil suit is pending between the parties. Even then, the court has considered the possibility of false implication of the applicants over some property dispute between the

parties. Even after release of the respondent nos. 2 and 3 on bail, father of respondent no.2 and father of respondent no.3 gave threats to the father-in-law of the applicant/prosecutrix and accordingly non-cognizable offence also came to be registered in the concerned police station against them.

4. Learned counsel for respondent nos.2 and 3/original accused nos.1 and 2 submits that, respondent nos. 2 and 3 are the cousin of the husband of the complainant and their agricultural lands are situated adjoining to each other. Some 10-15 years back, father-in-law of the applicant had sold his remaining land to the grand mother of respondent nos. 2 and 3 and there was some dispute in respect of the cultivation of agricultural land. So, father of respondent no.2 had lodged a N.C. Case against the complainant party. Learned counsel submits that, due to said dispute, subsequently, respondent nos.2 and 3 and co-accused Yogesh came to be implicated falsely for the offence of rape. Learned counsel submits that, medical

evidence and other evidence on record does not corroborate the prosecution case. Learned Additional Sessions Judge has, therefore, rightly released respondent nos. 2 and 3 on bail. Learned counsel submits that, at present charge sheet came to be submitted before the Magistrate and case is posted on 18.8.2017 for committal of the case to the Sessions Court. Learned counsel submits that respondent nos. 2 and 3 are the young persons and no purpose would be served by cancellation of their bail at this stage.

5. I am surprised to see the callous approach of the learned Sessions Judge while releasing respondent nos. 2 and 3 on bail. It appears that, the applicant victim, a young girl aged about 23 years and recently married, was subjected to gang rape in her own field when she was doing agricultural work alone. As per her version she had not disclosed the incident due to threats given by the accused persons and might be because she was recently married. However, only after arrival of her mother, she disclosed real incident to her mother about

gang rape. Her mother had thereafter disclosed the incident to family members and all family members including husband of the victim, in-laws supported the applicant/victim and accordingly, she had given her supplementary statement disclosing the real incident to the police. In the given circumstances and since the applicant is a married woman, medical evidence may not support the prosecution case. Though, the incident had taken place on 25.3.2017 due to reasons as discussed above, the applicant victim has disclosed real incident on 30.3.2017. In the circumstances, there may not be any other evidence in the form of the stains on clothes, injuries on the back portion, etc. However, it appears that, the learned Additional Sessions Judge has not given any thought to it. It has not transpired during the course of the investigation that agricultural land of respondent nos. 2 and 3 are situated adjacent to the land of the husband of the applicant. Learned counsel for respondent nos 2 and 3 during the course of the argument has placed on record registered sale deed. On perusal of the said sale deed, it appears that one Bhima

Ganpat Vanjari sold land to one Bansibai Vanjari on 24.5.1994. Learned counsel has fairly conceded that, N.C. copy is not with him. It is not clear as to what sort of civil dispute was pending between the parties. Admittedly, there was no civil litigation between the parties in the Court. It is difficult to believe that, in absence of any such dispute, a young married girl made such false allegations of gang rape against respondent nos. 2 and 3 and co-accused Yogesh. Prima facie, there is strong case against the applicants. Learned Additional Sessions Judge, Jalgaon has not considered the same and casually granted bail to respondent nos. 2 and 3.

6. So far as above observations are concerned, since the charge sheet is now filed and case is pending for committal, it is made clear that, the Sessions Judge shall not get influenced by the observations made by this court while disposing of this application and decide the case on its own merits.

7. In view of the above discussion, I proceed to pass

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the following order.

O R D E R

1. Criminal Application is hereby allowed.
2. The order passed by the Additional Sessions Judge dated 12.4.2017 in Criminal Bail Application No.193/2017 is hereby quashed and set aside.
3. Respondent No.2/original accused No.1-Vinod Kashinath Jadhav and respondent No.3/original accused no.2-Rajkumar Alias Talib Machindra Jadhav shall be arrested forthwith and they be produced before the concerned court for further remand.
4. At this stage, the learned counsel appearing for respondent nos.2 and 3 requested to stay the effect of this order for a period of four weeks so as to enable respondent nos. 2 and 3 to approach the Supreme Court. I am not inclined to accept this request. Request stands rejected.
5. Application is accordingly disposed of.

(V.K. JADHAV, J.)

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