

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

CRIMINAL APPLICATION (BA) NO.57 OF 2017

Kisan s/o Bhilya Patel

..VS..

State of Maharashtra, through Police Station Officer, Police Station Dharni, Taluka Dharni, District Amravati

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

Court's or Judge's Order

Shri P.R. Agrawal, counsel for the applicant.

Shri N.B. Jawade, Addl.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 17, 2017.

This is an application for bail by accused in Crime No.0437 of 2016 registered for the offences punishable under Sections 363, 366, 376(2)(n), and 504 read with Section 34 of the Indian Penal Code.

Heard learned counsel for the applicant and learned Additional Public Prosecutor for the non-applicant/State.

It is submitted that applicant is in no way involved in this offence as from the documents filed with the charge-sheet it is seen that prosecutrix, who claims to be aged seventeen years having love affair with applicant, willingly on her own accompanied applicant and had also developed physical relation with him, however, falsely involved the applicant on 28.8.2016 and is thus arrested on 2.9.2016. It is,

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therefore, submitted that as investigation is complete and charge-sheet is filed applicant be released on bail.

Learned Additional Public Prosecutor has opposed the application as per its reply on record.

Perused the documents filed with the charge-sheet. From the F.I.R. it is established that prosecutrix was having love affair with applicant since three years from the alleged date of incident during which period they developed physical relations and indulged into such act on number of occasions. It is further stated that on 28.8.2016, applicant on arriving to the house of prosecutrix, forcibly took her along with co-accused Ankush and Aakash to village Zapal to the house of applicant's relation where applicant is stated to have indulged into sexual act with her against her wish. Contents of report reveal that applicant is stated to have visited house of prosecutrix in the presence of her grandmother, younger brother and sister. However, on the query to learned Additional Public Prosecutor, on instructions stated that grandmother has not stated about arrival of applicant to the house in her statement.

In the background of contents of report as above, on perusal of statement of Hirasingh, who is referred as applicant's relative in her report, nothing could be established if prosecutrix was sexually assaulted in his house in the night of 28.8.2016. Though from the statement of Hirasingh it can be

established that applicant along with prosecutrix arrived to his house who allowed them to stay in room on that night as were introduced as friends of his son, it is no case of the prosecution that on the following day in the morning prosecutrix had complained Hirasingh of being sexually assaulted by applicant. In fact, from his statement it is found that when applicant's father arrived in his house, prosecutrix and applicant both left in the adjoining field and after hiding in the field arrived back in the house of Hirasingh only after applicant's father had left. From the contents as aforesaid it is found that prosecutrix was never forced to accompany applicant, however, appears to have falsely involved applicant by filing report on 28.8.2016.

In view of the facts as aforesaid and since according to the medical report nothing can be established as according to it no opinion of sexual assault is given nor prosecutrix was found to have sustained any injury on her person, as investigation is complete, application is liable as per order below:

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.

While on bail, applicant shall not reside at village Dahendra, Taluka Dharni, District Amravati, pending Trial.

Applicant shall mark presence with Dharni

Police Station, District Amravati, on 15th day of each month, pending Trial.

Needless to say that applicant shall not make any attempt to contact prosecutrix or pressurize her in any manner.

The applicant shall submit proof of his residence with the investigating officer and shall update the same in the event of change in future.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

**Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)**

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