

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

CRIMINAL APPLICATION (BA) NO.58 OF 2017

[Mahesh s/o Marotrao Charpe .vs. The State of Maharashtra]

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

Court's or Judge's

Shri R.M. Daga, Advocate for applicant,
Mrs. Kalyani Deshpande, APP for respondent.

CORAM : P.N. DESHMUKH, J.
DATED : FEBRUARY 07, 2017.

Heard learned Counsel for both sides.

This application is filed by applicant for grant of bail in Crime No.112/2016 registered by Police Station, Narkhed for the offence punishable under Sections 354, 354 (B), 376 (2)(I)(N) of Indian Penal Code read with Sections 8, 4 and 6 of Protection of Children from Sexual Offences Act.

It is submitted on behalf of applicant that though according to report dated 13.9.2016 lodged by prosecutrix allegations are with regard to offence punishable under Section 354 of Indian Penal Code of applicant outraging her modesty. It is further submitted that three days thereafter he came to be involved by prosecutrix in her additional statement dated 16.9.2016 where accused is alleged to have committed rape on her on 13.9.2016 as well as two years before that date. Learned counsel for applicant, in view of such inconsistency in the report and additional statement of prosecutrix, has contended that applicant is falsely involved, as after three days of the incident, offence punishable under

Section 376 of Indian Penal Code came to be added in the present crime. By referring to the medical papers, it is also contended that if, according to additional statement of prosecutrix, he was knowing applicant, there was no reason for prosecutrix to not to disclose the name of applicant to the Medical Officer while she was examined at Hospital after her report was lodged on 13.9.2016. It is, therefore, contended that in view of material inconsistency in the report and additional statement of prosecutrix and from the documents as aforesaid being medical papers, as no involvement of applicant is found, application be allowed.

Learned APP opposed the application as per the reply filed on record, however, contended that as per the subsequent statement recorded involvement of applicant is established and as per the contents thereof, since prosecutrix was scared, on 13.9.2016 she did not disclose fact of sexual assault on her by applicant on 13.9.2016 itself. It is, therefore, contended that application be rejected.

On perusal of report dated 13.9.2016, prosecutrix in clear terms had stated that while she was alone in the house, after her father had left the home with the father of applicant at some place, applicant forcibly made her lie on the cot and outraged her modesty and extended threat to her not to disclose about such fact to anyone and further stated that in the meantime her father arrived on the motorcycle, when applicant ran away out of the house. On bare perusal of her report dated 13.9.2016, there is no whisper of applicant

committing sexual assault upon the prosecutrix.

Contrary to the contents of report, as such it is material to note that in the subsequent statement of prosecutrix dated 16.9.2016, she had alleged applicant to have indulged in sexual intercourse with her two years before when she had visited applicant's field to perform agricultural operation and as such stated that on 13.9.2016 applicant, after making her lie on the bed and committed sexual intercourse with her and on arrival of her father in the house, ran away from the house.

As stated aforesaid, since report dated 13.9.2016 is totally silent about applicant's having sexually assaulting complainant on that day, subsequent statement creates doubt upon its contents.

Moreover, from the statement dated 16.9.2016, it is revealed that complainant was knowing the applicant and, in fact, they were friends and applicant was on visiting terms to her. As such, it is noted that complainant was knowing the applicant. However, on perusal of MLC Card, dated 13.9.2016, it is found that complainant has disclosed the history of assault and has not named applicant therein stating that she was assaulted by somebody. She was then referred to Government Medical College and Hospital at Nagpur for physical examination. However, from the documents with the charge sheet, it is found that the prosecution was referred to Mayo Hospital, Nagpur. There also she did not disclose the name of applicant, while

giving history of assault.

However, after recording her additional statement on 16.9.2016 when she alleged to be sexually assaulted, was further referred for her medical examination, when she gave history of assault involving applicant to have committed rape upon her and even two years prior to 13.9.2016 to that date.

Having considering facts as aforesaid and material inconsistency in the report and additional statement of prosecutrix, application is allowed as per following order :

The applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in like manner.

While on bail, the applicant shall mark his presence with Narkhed Police Station once in three months on the first date of each such month pending trial.

The applicant shall submit proof of his residence to the concerned Police Station and update the same in the event change of his address.

The criminal application is disposed of.

JUDGE