

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLIATION (BA) NO.72 OF 2017.

Eknath Bandu Chauhan

..VS..

The State of Mah.P.S.O. P.S.Manora, Tq.Manora, Distt.Washim.

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

Mr.A.V.Band, Adv. for the applicant.

Mr.V.Gangane, APP for the State.

CORAM : P.N. DESHMUKH, J.

DATE : 2nd MARCH, 2017.

1. This application is filed for grant of bail by accused involved in Crime No.187 of 2016, registered at Police Station Manora, Distt.Washim, for the offence punished under Sections 363, 366(A), 376, 506, 34 of the Indian Penal Code read with Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned counsel for the applicant and learned Additional Public Prosecutor for the State.

3. It is submitted that from the statement of prosecutrix though she has stated that she was kidnapped by applicant and was taken to Pune where she was subjected to sexual intercourse on two occasions within 4 to 5 days, medical examination falsifies said fact. It is therefore submitted that since investigation is complete and charge-sheet is filed, application be allowed.

4. Learned Additional Public Prosecutor has opposed the application as per reply filed on record and has submitted that there is direct evidence involving applicant, application therefore prayed to be rejected.

5. Record reveals that, initially missing report was lodged by father of prosecutrix alleging that on 16th July, 2016, prosecutrix aged 17 years and 20 days old at 6.30 in the morning had left home to go to College at Manora however did not report back. It is specific stated that to go to College at Manora, prosecutrix boarded auto-rickshaw of applicant from Asola (Kh) and as she did not return back in the even, she was searched at Manora, however, was not traceable and therefore report came to be lodged. On the report as aforesaid, initially offence under Sections 363, 366(A) read with Section 34 of the Indian Penal was registered, as it is also contended in the report that apart from applicant his parents were also present in the auto-rickshaw which was occupied by prosecutrix.

6. From the statement of prosecutrix dated 24th July, 2016 it reveals that on 16th July, 2016 after she occupied applicant's auto-rickshaw to proceed to Manora, on reaching there, parents of applicant alighted from it while applicant took prosecutrix to Karanja against her wish and from there brought her to Pune by bus and thereafter they stayed in a place known as Narsapur for 4 – 5 days. During their stay, prosecutrix was subjected to sexual intercourse on two occasions.

7. In view of contents of report, I find much substance when it

is urged on behalf of the applicant that inspite of prosecutrix having been taken by applicant in auto-rickshaw from Manora to Karanja which is stated to be 35 kms. away, it is no case of prosecution that at any point of time prosecution has made any attempt to raise shout. Similarly, on reaching Karanja though she is alleged to have further taken by applicant to Pune by bus, there is no case of prosecutrix refusing to accompany applicant. In that view of the matter, prima facie, it is found that prosecutrix on her own willingly accompanied applicant to Pune.

8. With reference to later part of her statement of sexual assault alleged to have been committed upon her by the applicant, said statement does not find corroboration from medical evidence as according to this document, she is stated to have sustained no injury on her person nor any injury was found on her genital. The medical officer even has not given opinion or any finding with regards to sexual intercourse, if any, took place with the prosecutrix. Reason put forth for inability to give opinion is that it could not be given for want of FSL report. Inspite of such report, no investigation is carried out, or any attempt is made by Investigating Officer, to place on record specific opinion of Medical Officer with regard to sexual intercourse, if any, took place with prosecutrix. In the circumstances, and as investigation is complete, application is liable to be allowed. Hence, following order.

Applicant Eknath Bandu Chauhan shall be released on bail in Crime No.187 of 2016, registered at Police Station Manora, Distt.Washim on his executing P.R. bond in the sum of Rs.25000/- with one surety in the like amount.

The applicant shall not enter territorial jurisdiction of villages Asola and Manora, pending trial.

Applicant shall mark his presence with the Police Station within whose jurisdiction he prefers to stay, pending trial.

While on bail, the applicant shall produce proof of his residence to the Police Station within whose jurisdiction he would prefer to reside as well as to Police Station Manora.

The applicant shall not make any attempt to contact prosecutrix and to pressurise her in any manner.

JUDGE

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