

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

CRIMINAL APPLICATION (BA) NO.732 OF 2016
(Raju @ Rajya s/o Vasant Rao Jadhav vs. The State of Maharashtra)

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

Shri C.R. Thakur, Advocate for applicant.
Shri N.B. Jawade, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 25, 2017

This application is filed for bail in Crime
No.241/2015 registered under Section 376(2)(L) of
Indian Penal Code.

Heard Shri Thakur, learned Counsel for
applicant, and Shri Jawade, learned Additional Public
Prosecutor for respondent.

Shri Thakur, learned Counsel for applicant,
has submitted that according to the case of prosecution,
prosecutrix, who is 22 years old, is mentally challenged
since prior to the date of incident and thus, her
statement is not recorded during the course of
investigation. It is contended that according to medical
certificate dated 18/1/2017 issued by Regional Mental
Hospital, Nagpur in compliance to the direction issued
by this Court on the earlier date, even today, mental
condition of prosecutrix is stated to be same, which was
in the year 2013 as according to the certificate, the
specific query, which was made to Doctor by

Investigating Officer vide question no.7, enquiring if as on today prosecutrix is in a position to make a statement, is replied in negative. The medical certificate dated 18/1/2017 is taken on record.

Considering the facts as aforesaid, learned Counsel for applicant, has invited attention to the medical report dated 5/12/2015 on record and contended that as per contents of this document, history of incident was stated by her mother as told to her by prosecutrix. It is, therefore, submitted that if according to medical documents referred above, even today prosecutrix is mentally challenged and as such, is not in a position to make a statement, history of incident alleged to be stated by her to her mother, therefore, appears to be false. It is submitted that in the absence of statement of prosecutrix and as from the medical report, no offence of sexual assault upon prosecutrix can be said to be made out, application be allowed.

Admittedly, as per direction of this Court, Medical Officer from Regional Mental Hospital has issued certificate dated 18/1/2017 stating that even on the date of issuing such certificate, prosecutrix was not in a position to make a statement. In view of the statement as aforesaid, though there appears some substance in the submission of learned Counsel for applicant, that by itself cannot be sufficient to allow the application, particularly in view of the statement of Piyush, brother of prosecutrix, who has seen applicant in a compromising position with prosecutrix. There is nothing to disbelieve Piyush, who is 11 years old boy and

has no reason to falsely implicate applicant or to involve his sister, though mentally challenged, in the act involving offence of rape.

Having considered aforesaid facts, application is liable to be dismissed. However, as it is stated that charge-sheet is filed before learned trial Court on 2/6/2016, following order is passed :

The criminal application is rejected. Learned Sessions Judge, whosoever is seized of the sessions trial arising out of Crime No.241/2015 registered by Police Station, Katol, shall make an endeavour to dispose of the same within three months from the date of framing of charge. Needless to say that learned trial Judge shall not get influenced by the observations made in this order and shall individually analyse the evidence on record.

JUDGE

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