

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

CRIMINAL APPLICATION (BA) NO.982 OF 2016

Achyut s/o Raghunath Kamble

..VS..

State of Maharashtra, through P.S.O. Jiwati, District Chandrapur

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

Court's or Judge's Order

Shri S.A. Chaudhari, Counsel for the applicant.
Shri N.B. Jawade, Addl.P.P. for the non-applicant.

**CORAM : P.N. DESHMUKH, J.
DATED : FEBRUARY 28, 2017.**

One of accused involved in Crime No.7 of 2015 registered for the offences punishable under Sections 376(2)(j)(1), 376-D, 363, 366, 373(2)(A)(1) and Section 3(1)(12), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 has applied for bail.

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

It is submitted on behalf of applicant that there is no evidence establishing involvement of applicant to have sexually assaulted mentally challenged prosecutrix aged about 40 years. It is submitted that report came to be lodged by brother prosecutrix. However, in the entire report no

involvement of applicant is seen. It is submitted that as per additional statement of complainant recorded after five days, involvement of applicant is revealed who is said to be present in the house of co-accused Khanke, lineman and, therefore, submitted that as charge-sheet is filed, application is prayed to be allowed.

Learned Additional Public Prosecutor opposed application as per its reply on record and has submitted that as per the medical certificate on record it is established that prosecutrix is mentally challenged and thus her statement could not be recorded during the course of investigation, however to establish involvement of applicant, has relied upon statement of Draupadabai and has contended that applicant's involvement is established from this statement as according to Dhruptabai, she was informed by prosecutrix that she was subjected to sexual assault by four persons and has named them. It is, therefore, contended that in view of statement of Dhruptabai as aforesaid, applicant's involvement is established and thus, application is prayed to be rejected.

In the background of submissions as aforesaid, on perusal of report it is revealed that on 26.2.2015, prosecutrix along with her father and grandfather had visited village Gadchandur on that day complainant after visiting village Jiwati returned home in the evening and enquired about prosecutrix when his

wife informed that prosecutrix had not returned back though her father and grandfather came back. Complainant, thereafter, enquired with his father who stated that while they were returning to bus stop, prosecutrix got lost in the crowd and was not seen. Thus, complainant along with his friend Shuddhodhan came to Jiwati at 8:30 p.m. and enquired about his sister when he was informed that she was seen with co-accused Pappu Karase, Sweeper. Complainant therefor visited house of Pappu and found prosecutrix present there and also found said co-accused sexually assaulting her in his house. In the entire report, there is no whisper against applicant establishing his involvement in present crime at any point of time. In fact, from the report it is noted that complainant on enquiring to prosecutrix was informed by her that said co-accused, on the false pretext of offering her snacks, brought her in his house and on the pretext of offering water, administered liquor and, thereafter, sexually assaulted her.

Said contents of report *prima facie* corroborates the medical certificate on record wherein prosecutrix is stated to be under influence of alcohol when she was examined on the same day at 10:30 p.m.

On perusal of additional statement of complainant, it reveals that when he reached along with his friend Shuddhodhan, in search of prosecutrix, from

the villagers learnt that she was taken by co-accused Pappu and Khanke, Lineman to the house of Pappu then Shuddhodhan went to house of Pappu and from outside gave call enquiring if there was any female in the house which call was replied in negative and, therefore, returned back. He further stated that he thus along with Shuddhodhan went to the house of co-accused Khanke where applicant was found present and Khanke informed them that prosecutrix was in the house of co-accused Pappu and, therefore, complainant along with Shuddhodhan again went to the house of Pappu where prosecutrix was present and was sexually assaulted by Pappu. From the additional statement of complainant thus it revealed that except for presence of applicant in the house of co-accused Khanke, nothing has come on record.

In the background of nature of evidence against applicant as above, when statement of Dhruptabai, relied by prosecution, is perused, she has stated that when prosecutrix was under treatment in the hospital, in her presence when her brother Prakash enquired about the incident, prosecutrix informed him in her presence that she was sexually assaulted by four persons and stated names of said persons including that of applicant. As such, prosecutrix has relied upon said statement to establish involvement of applicant in this crime. However, *prima facie* it is found that

involvement of applicant as aforesaid is not sufficient to establish his involvement as one of the co-accused to have sexually assaulted prosecutrix. In fact, contents of statement of Dhruptabai about prosecutrix stating about involvement of applicant as aforesaid is doubtful in view of case of prosecution of investigating agency not obtaining her statement being of unsound mind. From the medical certificate on record dated 3.3.2015, it is specifically certified by medical officer from the Government hospital, Chandrapur that prosecutrix aged 45 years is a chronic patient of Schizophrenia and as such is not in a position to make any statement. Prosecution if at one hand is relying upon said statement to say that for this reason her statement could not be recorded, cannot rely upon statement of Dhruptabai to say that prosecutrix has informed her involving applicant in the present crime.

In that view of the matter and as investigation is complete, application is liable to be allowed 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 mark his presence with Jiwati Police Station, District Chandrapur once in three months on the first day of each such month.

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

Needless to say that observations as aforesaid are *prima facie* and learned Trial Judge shall not get influenced with the same and shall independently evaluate the evidence at the time of Trial

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)

Uploaded on :- 2/3/2017

...../-