

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

CRIMINAL APPLICATION (BA) NO.987 OF 2016
(Ajay s/o Gajanan Bure vs. 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 A.J. Thakkar, Advocate for applicant.
Shri C.A. Lokhande, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : FEBRUARY 10, 2017

Applicant, who is in custody in Crime No.204/2016 registered under Section 376 of Indian Penal Code, Sections 3 and 4 of Protection of Children from Sexual Offences Act and Section 3(1)(12) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, has applied for bail.

Heard Shri Thakkar, learned Counsel for applicant, and Shri Lokhande, learned Additional Public Prosecutor for respondent.

Shri Thakkar, learned Counsel for applicant, has submitted that applicant is falsely involved and though according to report, applicant is involved by mother of prosecutrix, who is admittedly minor on the day of incident, applicant by no stretch of imagination can be connected with the present crime as from the report, it is revealed that prosecutrix in spite of having pregnancy of seven months and residing with her sister and father in the house, none of her family members

found her to be pregnant. It is contended that as per report, it is only on 5/7/2016, complainant found prosecutrix carrying pregnancy and, therefore, enquired her when she disclosed name of applicant, who has committed sexual intercourse with her on some occasions, due to which she was pregnant. It is further contended that case of prosecution about prosecutrix's carrying seven months' pregnancy having not been noticed by her father and sister is just unbelievable.

It is also pointed out by learned Counsel that admittedly no D.N.A. test is carried out though investigation is complete and charge-sheet is filed. It is submitted that in fact application made for obtaining blood sample of applicant was rejected by the Magistrate against which admittedly no revision is preferred. It is, therefore, prayed that as involvement of applicant is baseless, application may be allowed.

Shri Lokhande, learned Additional Public Prosecutor for respondent, has opposed the application on the ground that age of prosecutrix is admittedly 15 years and few months and his involvement is clearly established on the basis of statement of prosecutrix. However, it is not disputed that no blood sample of applicant could be obtained and as such, there is no D.N.A. test report. Learned Additional Public Prosecutor has, however, admitted that in spite of rejection of claim of prosecution to obtain custody of applicant for obtaining blood sample for D.N.A. test by learned Magistrate, no revision is preferred against said order. It is submitted that considering the statement of

prosecutrix as well as report, application be rejected.

According to statement of prosecutrix, since six months prior to recording of her statement, she was introduced to applicant through her friend Sheetal Raut and thereafter they indulged into physical relations on couple of occasions. Her statement also reveals that on one occasion, she also alleged to have spent entire night out of her house with applicant. As per her further statement, her mother was not in the house for a period of about six months since she was in Mumbai and when she learnt that her mother is likely to arrive back on 1/7/2016, getting afraid since was carrying pregnancy, left home, however, while at Akola Bus Stand she was seen by one lady, who got her admitted in Murtizapur Women's Welfare Home.

With reference to submissions advanced on behalf of applicant when contents of report are considered, there appears substance in the said submissions as from the report it is revealed that for a period of more than seven months, complainant was not in her house as she was in Mumbai at one of her daughter's house. It is further found that complainant has five daughters and one son and while she was in Mumbai, her husband, i.e. father of prosecutrix and her another daughter Karisma were very much residing with prosecutrix in the same house during that period when according to prosecution, prosecutrix was carrying pregnancy of seven months. It is difficult to believe that her father or sister could not notice that prosecutrix was pregnant, who admittedly delivered a child on

13/9/2016. As per report, it is only on 5/7/2016 when her mother returned back from Mumbai, she on noticing prosecutrix being pregnant, enquired from her when applicant's name came to be revealed.

Considering contents of report as well as statement of prosecutrix, it was important to collect blood sample of applicant for D.N.A. test. Learned Counsel for applicant in this regard has invited attention to application filed by prosecution seeking custody of applicant on two occasions for collecting blood sample for D.N.A. test. However, on both the occasions, learned Additional Sessions Judge observing that custody of applicant was with Police, during which period no such investigation was carried out, rejected the application for grant of custody. Admittedly, no revision against said orders was passed. In that view of the matter, fact remains that as on date there is nothing to establish involvement of applicant as biological father of child delivered by prosecutrix and case of false implication of applicant is prima facie found substantiated as from the report it is revealed that in spite of prosecutrix having pregnancy of seven months, her pregnancy was not noticed by her father. In that view of the matter, as investigation is complete, there is no propriety in keeping applicant behind bar pending trial. Hence, following order :

Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- with one surety in like amount. Applicant shall attend Police Station, Mangrulpir on first day of every three months

pending trial. Applicant shall not enter territorial limits of villages Manoli and Arak in Taluq Mangrulpir, District Washim pending trial. Applicant shall furnish his residential address to Police Station, Mangrulpir and concerned Police Station where he would prefer to stay and shall update the same in the event of any change therein. The criminal application is accordingly allowed.

JUDGE

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