

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

CRIMINAL APPLICATION (BA) NO.1068 OF 2016
(Sunil s/o Ramani Rathod 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 S.V. Sirpurkar, Advocate for applicant.
Shri A.V. Palshikar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : MARCH 21, 2017

This is an application for bail by accused involved in Crime No. 118/2014 registered under Sections 376 and 506 of Indian Penal Code and Section 3(1)(12) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Shri Sirpurkar, learned Counsel for applicant, submits that from the report, no involvement of applicant can be established to have committed sexual intercourse with complainant against her wish. It is contended that age of prosecutrix is 20 years and since January 2014 she was knowing applicant, who is stated to have sexually assaulted her. However, no report of any such incident has been made till lodging of report in October 2014. It is further contended that in fact, prior to lodging of first information report on 17/10/2014, prosecutrix had lodged report against applicant alleging him to have sexually assaulted her on the pretext of marriage and about his refusal to marry, on the basis of

which N.C. case is registered. It is submitted that while lodging such report on 26/9/2014, there is no allegation of alleged rape upon her by applicant and though according to report, prosecutrix had delivered a child, no D.N.A. test could be performed as child died immediately after its birth. It is further submitted that applicant is falsely involved and, therefore, application be allowed.

Shri Palshikar, learned Additional Public Prosecutor for respondent, has opposed the application as per reply on record.

Perusal of report dated 17/10/2014 reveals incident, which is alleged to have taken place in January 2014 when applicant is stated to have sexually assaulted prosecutrix for the first time. Admittedly, there is no report of such incident lodged prior to 17/10/2014. Similarly, from further contents of report, though it is found that on the pretext of marriage, applicant then continued physical relations with prosecutrix, she does not appear to have resisted the same and in fact, was pregnant and delivered a child on 27/9/2014, who died immediately after its birth. It is noted that report came to be lodged when applicant expressed his inability to marry complainant. However, from the entire tenor of report, by no stretch of imagination, it can be said that applicant has committed sexual intercourse against wish of prosecutrix.

Considering facts as aforesaid and since charge-sheet is filed, there is no purpose in keeping applicant, who is aged about 28 years, behind bars. The criminal application is, therefore, liable to be allowed by

imposing suitable conditions :

Applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.20,000/- with one surety in like amount. While on bail, applicant shall not stay at village Eklara, Taluq Manora, District Washim. Applicant shall mark his presence with Police Station, Manora on first day of each month between 2 p.m. and 5 p.m. and with Police Station in whose jurisdiction he would prefer to reside on first day of every three months pending trial. Applicant shall not make any attempt to contact prosecutrix pending trial.

The criminal application is accordingly allowed.

JUDGE

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