

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

CRIMINAL APPLICATION (BA) NO.1132 OF 2016
(Ramkumar s/o Mangalprasad Vishwakarma 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.

Ms. Rohini Khapekar, Advocate for applicant.
Shri C.A. Lokhande, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 17, 2017

This application is for bail by accused in
Crime No.2722/2016 registered under Sections 376(1)
and 452 of Indian Penal Code.

Ms. Khapekar, learned Counsel for applicant,
submits that prosecutrix is admittedly a married woman
and has falsely involved applicant in the present crime.
Prior to lodging this report, she had lodged N.C. against
applicant, on the basis of which preventive action was
initiated against applicant. It is contended that relations
between applicant and complainant were strained prior
to incident and, therefore, application be allowed as
according to reply, investigation is almost complete.

Shri Lokhande, learned Additional Public
Prosecutor for respondent, has opposed the application
as per reply on record and contended that there is direct
evidence against applicant and, therefore, application be
rejected.

Complainant appears to have lodged report

on 24/10/2016 alleging that in the morning on 23/10/2016 when she was in the bath-room, applicant entered from outside by opening latch and on entering bath-room, removed clothes on her person and sexually assaulted her in bath-room. It is material to note that though according to the case of prosecution, incident took place at 5.15 a.m. on 23/10/2016, report of this incident was lodged on 24/10/2016 at 3.30 p.m., which appears to be a belated report, for which no reason is mentioned in the report. On the contrary, learned Counsel for applicant during the course of hearing has tendered at Bar a notice received by applicant with reference to registration of N.C. and preventive action initiated against him by Special Executive Magistrate. This document establishes that relations between applicant and prosecutrix were strained prior to incident.

Admittedly, complainant is a married woman and as per report, has three children. Medical evidence does not establish sexual assault upon her as she is found examined on the day of registration of offence, i.e. on 24/10/2016 in Government Hospital. She is also stated to have not sustained any trauma or injury on her person.

Considering the aforesaid facts, case of prosecution that applicant committed sexual intercourse forcibly upon an adult female in a bath-room does not prima facie appear to be convincing in view of the fact of further case of prosecution of applicant entering into her bath-room after opening latch from outside. On a specific query put to learned Additional Public

Prosecutor, he has stated on going through spot panchanama that there is no reference of any latch to the back side door of bath room from inside. In the circumstances and as according to reply, investigation is almost complete, application is liable to be allowed by imposing conditions as per order below :

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. While on bail, applicant shall mark his presence with Police Station, MIDC, Hingna, Nagpur on first day of each month till filing of charge-sheet and thereafter once in three months, i.e. on first day of every three months pending trial. Applicant shall not stay at village Nildoh, Hingna Road, MIDC, Hingna, Nagpur pending trial. The criminal application is accordingly allowed.

JUDGE

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