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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 1089 OF 2017

Gundurao Yallappa Kamble	...	Applicant
Vs.		
State of Maharashtra & Ors.	...	Respondents

Mr. Satyavrat Joshi, for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Vishal S. Ambole, Constable, Chandgad Police Stn., District –
Kolhapur – Present.

CORAM : P. N. DESHMUKH, J.

DATE : MARCH 26, 2018

PC :-

1. This application is filed by sole accused in C. R. No. I 190/2016 registered for the offences punishable under Section 354, 354A1, 354A2, 354D, 201, 204 of I.P.C. and Section 66A and 67A, by Chandgad Police Station, district Kolhapur.

2. Learned counsel for Applicant submitted that Applicant is falsely implicated in the present crime. He submitted that evidence of all the material witnesses, including complainant, in this case is

recorded and the evidence is full of material omissions and contradictions. Though while considering the bail application, this by itself cannot be the ground for consideration and it is required to see if Applicant's prima-facie involvement is established. It is material to note that this Court by its order dated 26.7.2017, considering facts in the present crime passed order to fix this application for hearing after statement of victim girls is recorded. Admittedly, charge-sheet in this crime is filed on 6.4.2017; charge is framed on 31.7.2017; recording of evidence is commenced on 9th August, 2017. On the earlier date, this Court, before commencing hearing of this application, called report in Special Case No. 463 of 2017. Accordingly, learned Magistrate submitted progress report till 1st March, 2018, stating that on that day, matter was posted for recording evidence of Investigating Officer.

3. Learned APP, on instructions from some officer who is admittedly not Investigating Officer, has made statement contrary to the statement made by learned counsel for Applicant, that evidence of complainant is yet to be recorded, upon which learned counsel for Applicant has produced a copy of evidence of complainant.

Instructing Officer, therefore, appears to be giving wrong instructions to learned APP who in turn is submitting to the Court. It is observed that Investigating officers are avoiding to attend Courts without sufficient reasons and direct other officers to attend, who do not have knowledge of case. Most of the times, only reason for their non-attendance is that they are busy in bandobast. This practice is highly deprecated. In the absence of presence of Investigating Officer, prosecution is unable to assist the Court effectively, like in the present application wherein though evidence of prosecutrix is recorded, and the trial has commenced on 7.8.2017, statement is made by prosecution that no such statement is recorded when, in fact, statement of both the victims are recorded by the Trial Court.

4. Considering the fact that offences for which Applicant is facing trial are punishable with the imprisonment upto five years imprisonment and further considering that Applicant is in custody from 7th February, 2017 and as evidence of all the material witnesses is recorded, application is allowed as per following order:

- (i) Applicant shall be released on bail in C. R. No. I
190/2016 registered by Chandgad Police Station,

district Kolhapur on his executing PR bond in the sum of Rs. 50,000/- with one surety in the like amount;

- (ii) Applicant shall not enter limits of Chandgad Police Station except for attending the Court on the date of hearing;
- (iii) Learned counsel for Applicant, on instruction, submits that while on bail, Applicant shall stay at Kolhapur, within the jurisdiction of Shahu Police Station. Applicant shall attend Shahu Police Station, Kolhapur on the first day of each month initially for a period of six months, and thereafter quarterly on the first day of such months, pending the trial;
- (iv) Applicant shall provide his complete address to the Investigating Officer and shall not leave jurisdiction of Kolhapur district till conclusion of trial;
- (v) It is made clear that learned Trial Court shall not get influenced by any of the observations made herein, and shall independently evaluate evidence at the time

of trial;

- (vi) Application is accordingly disposed of in the aforesaid terms.

Sd/-
[P. N. DESHMUKH, J.]

Vinayak Halemath