

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

Criminal Application (BA) No.577 of 2019
(Amol Dadarao Wakode .vs. State of Maharashtra through PSO PS
Nandura, Dist. Buldhana.)

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

Mr. P.S. Wathore, Advocate for Applicant
Mr. H.R. Dhumale, APP for Non-applicant/State.

CORAM : Manish Pitale, J.
DATED : August 09, 2019.

The applicant has approached this Court seeking bail as he was arrested on 02.02.2018 in connection with first information report (FIR) of the same day, whereby offences under Sections 376, 376(2) (i), 376(2)(n), 376-D, 452 and 506 of the Indian Penal Code were registered against him and other accused persons.

2. At the out set, the learned counsel for the applicant sought to rely in the present application on the basis of parity, since this Court granted bail to a co-accused person by order dated 07.06.2019 passed in Criminal Application (BA) No. 426 of 2019 (Anand Gajanan Sardar .vs. State of Maharashtra). It was submitted that one of the reasons why bail was granted to the co-accused person was that the DNA report demonstrated that the said co-accused person could not be held to be biologically and genetically connected with the fetus which was aborted from the prosecutrix. It was pointed out that even in the case of the applicant

herein, DNA report was negative and that, therefore, he was entitled to grant of bail on parity.

3. The learned APP has strongly opposed the said submission by pointing out that the main distinguishing feature between the co-accused who was granted bail and that of the applicant was that while the applicant was named by the victim at the out set and the applicant was specifically named in the FIR as an accused person, the name of the said co-accused person came to be added after about 20 days when a supplementary statement of the victim was recorded by the Police. On this basis, it was pointed out that there is no question of parity in the present case.

4. The learned counsel for the applicant further submitted that the FIR in the present case was lodged on 02.02.2018, while the alleged incident of forcible sexual intercourse had taken place between 01.09.2017 and 01.10.2017 as per the FIR. It was submitted that the applicant was working with Ideal Facility Management at Pimpri Pune during the aforesaid period and that, therefore, it could not be said that the allegations against the applicant made by the victim were genuine. In support of the said contention, the learned counsel for the applicant invited attention of this Court to a pass-book and bank statement showing that the salary from the said employer was credited into his account during the period when the incident is said to have taken place. The learned counsel for the applicant also placed before this Court a chart for the months of September and October, 2017, which is said to be the attendance sheet maintained by the aforesaid

employer, to support the contention that the applicant was on duty at Pimpri, Pune when the said incident is said to have taken place. On this basis, it is contended that the applicant deserves to be granted bail.

5. The learned APP as noted above, has strongly opposed grant of bail in the present case. While the learned APP is justified in distinguishing the case of the applicant with that of the co-accused by pointing out that the applicant was named at the out set as an accused person in the present case, but it is also a fact that DNA report dated 16.03.2019 submitted by the Regional Forensic Science Laboratory, Nagpur, states that the applicant was excluded from being a biological father of product of conception with the victim. To the extent that the DNA report is negative in the case of the applicant, there is certainly parity between the applicant and the co-accused person who was granted bail. Apart from this, the material brought on record by the applicant in the form of attendance sheet maintained by the alleged employer of the applicant and the bank pass-book/statement relied upon by the learned counsel for the applicant does *prima facie* indicate that there might be some substance in the contention raised on behalf of the applicant that he was in fact present in Pimpri Pune at the time when the victim alleges that she was subjected to forcible sexual intercourse by the applicant. There is no doubt about the fact that the said documents would have to face the rigour of trial when the trial actually commences before the trial Court, yet for the present, while considering the question of grant of bail, such documents do appear to be relevant.

6. In view of the fact that the investigation is complete and the charge-sheet in the present case is filed and in view of the observations made above, the present application deserves to be granted, although subject to stringent conditions to be imposed on the applicant.

7. In view of the above, the present application is allowed and the applicant is directed to be released on bail in connection with Crime No. 78 of 2018 registered at Police Station Nandura, district Buldana, on the following conditions:-

a) The applicant shall furnish P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand) and a surety in the like amount.

b) The applicant shall not enter the jurisdiction of Police Station Nandura, district Buldhana, during the pendency of the trial.

c) The applicant shall attend the proceedings before the trial Court on each and every date.

d) The applicant shall not tamper with the evidence or influence witnesses.

8. Needless to say that violation of any of the conditions noted above, may lead to cancellation of bail granted to the applicant. It is clarified that the observations made in this order are limited to the question of grant of bail to the applicant.

JUDGE