

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

Criminal Application (BA) No.643 of 2019
(Gajanan Ramdasji Kajale .vs. State of Maharashtra through PSO PS
Kalamb, Dist. Yavatmal.)

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

Mr. M.P. Kariya, Advocate for Applicant
Mr. V.P. Maldhure, 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 24.06.2019 in pursuance of an first information report (FIR) registered on the same day for offences under Sections 376(2)(d) and 449 of the Indian Penal Code. The offences were registered against the applicant and a co-accused person who is a minor.

2. As per the allegation levelled by the complainant, the applicant and the co-accused person entered into her house when she was alone indulged in forcible sexual intercourse.

3. The learned counsel for the applicant points out that the description of the incident would show that offence under Section 376(2)(d) of the IPC would certainly not arise in the present case and that a perusal of the FIR would show that while the incident was alleged to have taken place at about 10 a.m. in the morning on 22.06.2019, the FIR was registered on 24.06.2019 at about 7.30 p.m. in the evening. It is

further pointed out that there is nothing to indicate that the complainant had offered any resistance during the incident and that, therefore, the entire allegation against the applicant appears to be not supported by material on record.

4. Upon notice being issued, reply has been filed on behalf of the non-applicant/State, pointing out that the investigation in the present case is still in progress and that, therefore, the applicant does not deserve to be enlarged on bail.

5. A perusal of the material on record shows that the FIR was indeed registered more than 48 hours after the alleged incident. A perusal of the medical examination report of the complainant shows that there are no external physical injuries suffered by the complainant on her body or her private part. The doctor has recorded a history as stated by the complainant and it is specifically recorded that the complainant was said to be in relationship with the applicant for about twelve months. Although despite being in a relationship, the complainant could still have raised a grievance about forcible sexual intercourse but the medical examination report does not show any signs of physical injury suffered by the complainant. This would indicate, at this stage, that there was no resistance offered at all by the complainant when the alleged incident took place. In this context, the statement of the complainant recorded by the doctor regarding alleged relationship with the applicant assumes significance.

6. Considering the aforesaid material that has come on record, this Court is of the opinion that the

applicant deserves to be granted bail. Accordingly, the present application is allowed and the applicant is directed to be released on bail in connection with Crime No. 200 of 2019 registered at Police Station Kalamb, district Nagpur, 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 report to Police Station Kalamb, district Yavatmal, on second and fourth Sunday of each month between 10 a.m. and 5 p.m., till filing of the charge-sheet.
- 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.

7. 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

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