

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

CRIMINAL APPLICATION (ABA) NO. 736 OF 2019

Kunal s/o Kishor Sawarkar .Vs. State of Maharashtra,through P.S.O, P.S.
Jaripatka, Nagpur.

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

Court's or Judge's orders.

Mr. P.S. Tiwari, Advocate for applicant.
Mr. P.S. Tembhare, A.P.P. for non applicant- State.
Advocate for intervenor is absent.

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 26, 2019

CRIMINAL APPLICATION (APPP) NO. 1870 OF 2019

This is an application for assisting the prosecution
filed by the original complainant.

For the reasons stated in the application, the
application is allowed. Complainant is allowed to assist the
prosecution.

The application is disposed of.

CRIMINAL APPLICATION (ABA) NO. 736 OF 2019

Heard Mr. Tiwari, learned counsel for applicant
and Mr. Tembhare, learned Additional Public Prosecutor for
non applicant-State. The learned counsel assisting the
prosecution is absent.

Applicant is apprehending his arrest in
connection with Crime No.1217/2019 registered with Police
Station, Jaripatka, Nagpur for an offence punishable under
Sections 376(2)(n), 506 and 109 of the Indian Penal Code.

The reply of the prosecution is on record. I have also perused the investigation papers and the report on which the crime is registered was lodged on 30.09.2019 by the victim herself. The report was lodged not only against the applicant but also against his parents.

The first information report would show that in March, 2018 victim got acquainted with the applicant through her friend when she was serving in one recruitment company. Applicant took her cellphone number and thereafter there used to be conversations in between them daily. This fact was known to the applicant's parents. On 01.09.2018, the victim along with her four friends went to darshan of Shri Gajanan Maharaj at Shegaon. That time applicant also accompanied with them. They all stayed at Hotel Snehalata. It is alleged in the report that when the victim was staying in the room of her friend Amrapali that time the applicant committed sexual intercourse with her against her wish. Though the victim was about to disclose the said fact, she did not disclose because the applicant gave threat, is statement in the first information report. It is also stated in the report that thereafter the applicant used to continue sexual intercourse against her wish. When this fact was disclosed to her mother by the victim, it is statement in the first information report that that time the applicant gave promise that he will marry with her. It is also stated in the first information report that on 12.11.2018 the applicant took victim to his house and thereafter he introduced her with his parents and with their consent, the applicant

committed sexual intercourse with the victim. It is also stated in the first information report that the parents of the applicant took Rs.2,00,000/- from the victim on a promise that she will be provided employment. According to the allegations in the first information report, neither applicant married with the victim nor amount was repaid. It is also stated in the report, though initially on 13.06.2019 she lodged a report with the Police Station, Jaripatka, Nagpur in view of the false promise of marriage, she withdrew the said complaint on 16.08.2019 and thereafter the present report is lodged.

The first information report and the other investigation papers would show that the victim is a fully grown lady. Insofar as first bout of forcibly sexual assault is concerned, it was committed on 01.09.2018 and the said was never disclosed. It is not the case on that at that particular time any promise was given to the victim and on that he committed sexual intercourse. Therefore, lodging of the FIR of the said incident belatedly has its own impact. Insofar as the other statements of the victim that subsequently on the pretext of marriage the applicant committed sexual intercourse, the said fact will have to be proved by the prosecution during the course of trial, especially when victim is fully grown lady.

Though the application is opposed on the ground that on 12.10.2019 and 02.11.2019 the applicant gave threats to the victim requiring police machinery to register two NC reports, the applicant has filed affidavit dated

19.11.2019 making a statement that on 12.10.2019 he was at Mumbai. The said statement is not controverted by the prosecution. Insofar as, NC report on 02.11.2019 perusal of the said report, in my view, shows that said report is vague in nature.

This Court (Coram: Rohit B. Deo, J.) on 25.10.2019, while protecting the applicant directed that applicant shall attend Police Station, Jaripatka, Nagpur on every Monday and Friday until further orders and shall cooperate with the investigating officer. The applicant has attended the police station as per direction given by this Court and joined the investigation and extended the cooperation, is the statement of the learned counsel for the applicant. This statement is not disputed by the learned Additional Public Prosecutor. On the contrary, upon instructions from the investigating officer, the learned Additional Public Prosecutor accepted the statement made by the learned counsel for the applicant.

In totality of aforesaid circumstances, in my view, applicant can be protected by exercising discretion in favour of the applicant. Resultantly, I pass following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.1217/2019 registered with Police Station, Jaripatka, Nagpur for an offence punishable under Sections 376(2)(n), 506 and 109 of the Indian Penal Code, applicant- Kunal s/o Kishor Sawarkar be released on bail on he executing P.R.

Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Jaripatka, Nagpur as and when called by the investigating officer. However, for that the investigating officer shall give clear cut two days prior written communication to the applicant.

The application is disposed of.

JUDGE

srwagh