

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

CRIMINAL APPLICATION (BA) NO. 1026 OF 2019

Tanaji s/o Vithoba Shingade .Vs. State of Maharashtra through PSO P.S.
Hiwarkhed, Tah. Khamgaon, Dist. Buldana.

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

Court's or Judge's orders.

Mr. S.V. Sirpurkar, Advocate for applicant.
Mr. V.A. Thakare, A.P.P. for non applicant-State.
Mr. T.L. Pande, Advocate for intervenor.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 10, 2019

CRIMINAL APPLICATION (APPP) NO. 1949 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. Mr. T.L. Pande, learned counsel is
allowed to assist the prosecution.

The application is disposed of.

CRIMINAL APPLICATION (BA) NO. 1026 OF 2019

Heard Mr.S.V. Sirpurkar, learned counsel for the
applicant, Mr. V.A. Thakare, learned Additional Public
Prosecutor for the non-applicant-State and Mr. T.L. Pande,
learned counsel for complainant to assist the prosecution.
Also perused reply filed on behalf of the prosecution.

The applicant is arrested on 08.02.2019 in
connection with Crime No.9/2019 registered with Police
Station, Hiwarkhed, District Buldana for an offence

punishable under Sections 376(3), 376(2)(n), 376(2)(f) and 506 of the Indian Penal Code.

The investigating agency has already completed the investigation and has filed the charge-sheet. The charge-sheet contains Bonafide Certificate which shows that the date of birth of the victim is 04.07.2002.

The report was lodged by Chanda, mother of the victim, on 06.02.2019. As per report, victim was taking her education in 10th Standard. As per report, on 03.02.2019, complainant's son Pravin made a phone call to her informing that victim is not keeping good health. Therefore, she was asked to visit house immediately for taking victim in the hospital. Accordingly, the victim was taken to Chohotta Bazar. It is stated in the report that on 05.02.2019 victim disclosed that she is having difficulty while urinating. Therefore she was taken in confidence by complainant and her husband thereupon victim disclosed that prior to three months when complainant and her husband had been to sheep yard at 12:00 in the night she went outside for answering nature's call, that time the applicant who is her maternal uncle was present there. He dragged her to nearby orchard and committed sexual intercourse with her. It is also stated in the report that victim disclosed that applicant continued his acts subsequently also on two to three occasions.

As per prosecution case, due to sexual assault made by the applicant victim become pregnant. Her pregnancy was medically terminated and fetus was

preserved for DNA test.

This application was heard by this Court on 26.11.2019. After hearing the parties to the application in view of steps taken by the prosecuting agency in respect of determining the parental putity to the aborted fetus, this Court directed the learned Additional Public Prosecutor to take necessary steps for producing DNA report. Accordingly, today Mr. V.A. Thakare, learned Additional Public Prosecutor for the State tendered DNA report along with covering letter from Police Station Officer to learned Additional Public Prosecutor, which is taken on record and marked as **Exhibit-X** for the purpose of identification. DNA report shows that analysis was started on 18.02.2019 and completed on 22.10.2019. As per DNA report, applicant-Tanaji Vithoba Shingade is excluded to be the biological father of abortus fetus of victim.

In view of the aforesaid scientific evidence and when the investigation is over and charge-sheet is already filed, I pass the following order

ORDER

- (i) The application is allowed.
- (ii) Applicant- Tanaji s/o Vithoba Shingade be released on bail in connection with Crime No.9/2019 registered with Police Station, Hiwarkhed, District Buldana for an offence punishable under Sections 376(3), 376(2)(n), 376(2)(f) and 506 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Hiwarkhed, Tah. Khamgaon, District Buldana once in a three months i.e. on last Wednesday in three months and shall be with the investigating officer from 03:00 p.m. to 05:00 p.m., until culmination of trial.

(iv) It shall be open for the prosecution that though the applicant is absolved from DNA test, still the prosecution can prove the allegations made against the applicant in respect of forcible intercourse with the victim.

(v) The application is allowed and disposed of.

JUDGE

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