

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1268 OF 2020

Shriram S/o. Uttam Valse,
Age-44 years, Occu-Business,
R/o. Sonvati, Tq. & Dist. Latur

**...APPLICANT
[accused No. 2]**

VERSUS

The State of Maharashtra

...RESPONDENT

Mr. Sachin S. Panale, Advocate for the applicant
Mr. S. Y. Mahajan, APP for the respondent/State
Mr. A. N. Gaddime, Advocate assist to APP

**WITH
BAIL APPLICATION NO. 1281 OF 2020**

Gowardhan S/o. Nathrao Badgire,
Age-52 years, Occu-Agri,
R/o. Sonwati, Tq. & Dist. Latur

**...APPLICANT
[accused No. 3]**

VERSUS

The State of Maharashtra

...RESPONDENT

Mr. P. P. More, Advocate for the applicant
Mr. Y. G. Gujrathi, APP for the respondent/State
Mr. A. N. Gaddime, Advocate assist to APP

CORAM : V. L. ACHLIYA, J.

DATE : 04-11-2020

P. C.

. The applicants arrested in crime No. 170 of 2020, registered at Latur Rural Police Station for the offences punishable under Sections 376(2)(n), 313 and 506 read with Section 34 of the Indian Penal Code preferred these applications seeking their release on bail.

2. Heard learned counsels for the applicants and learned AGP representing the respondent/State. Perused the first information report and papers of investigation.

3. By referring to allegations made in the first information report the learned counsel submits that though the applicants are arrested for committing offences under Sections 376 (2)(n), 313 and 506 read with Section 34 of the IPC but offence under Section 376(2)(n) of the IPC is attracted only against accused No. 1-Ganesh Valse. It is submitted that the informant /victim had lodged complaint on 24-09-2020, alleging therein that accused No. 1-Ganesh has repeatedly committed forcible sexual intercourse with her. He snapped her photographs in nude condition. In the month of October, 2019 the informant realized that she has developed pregnancy. She contacted accused No. 1-Ganesh and disclosed the fact regarding the pregnancy. It is alleged that accused No. 1 promised to marry with her after aborting her pregnancy. He told

her that his cousin brother is having medical shop at Latur and he will procure pills for abortion from his cousin brother. Accused No. 1 procured pills and gave it to her. He kept her for two days in the flat. However, her pregnancy was not aborted after taking pills. It is alleged that the applicant/accused No. 2-Shriram Valse is running medical shop at Latur and pills to abort pregnancy provided by him. The applicant/accused No. 3-Govardhan told about facility available for abortion at Baswakalyan, Karnataka State and later on helped accused No. 1-Ganesh to take the informant to Baswakalyan to abort her pregnancy. Informant has alleged that in the month of October, 2019 her pregnancy was aborted without her consent at Baswakalyan, Karnataka and the present applicants helped accused No. 1 in termination of her pregnancy.

4. In the background of the allegations made in the first information report the learned counsel for the applicants submits that the allegations made in the complaint against applicants confines to assist the accused No. 1-Ganesh to abort pregnancy of the informant. It is submitted that informant is engineering graduate from Pune. She was in affair with accused No. 1-Ganesh. The facts stated in the first information report itself rules out that her pregnancy was terminated without her consent. It is submitted that the investigation in the case is completed. The applicant Nos. 2 and 3 are in the jail from 24-09-2020 and 26-09-2020 respectively. They are respectable persons. They have deep roots in the society. They have landed property. There is no possibility of their abscondance, if released on bail. So also, there is no scope to draw

inference that applicants will pressurize the prosecution witnesses or tamper with the prosecution evidence. It is further submitted that the applicants are ready to abide the conditions that may be imposed in the event their released on bail.

5. On the other hand learned APP opposed the application with contention that there is a strong prima-facie case to connect the applicants with the offence under Sections 313 and 506 read with Section 34 of the IPC registered against them. By referring to allegations made in the first information report and the evidence collected during the course of investigation which includes CDR report showing location of the mobile phone of the applicants, learned APP submits that there is a strong evidence to connect the applicants with the commission of offences under Sections 313 and 506 read with Section 34 of the IPC. It is further submitted that the applicant /accused No.3- Govardhan is having criminal antecedents. The crime for committing offences under Sections 302, 307, 324, 323 and 452 read with Section 34 of the IPC registered at Murud Police Station, Latur vide crime No. 17 of 2004. In the year 2020 the offences under Sections 324, 323, 504 and 506 read with Section 34 of the IPC registered against him at Police Station Rural Latur vide crime No. 27 of 2020. It is contended that if the applicants are released on bail there is every likelihood that they may pressurize the prosecution witnesses from deposing against them.

6. I have carefully considered the submissions advanced in

the light of overall facts of the case, nature of accusation made against the applicants, offences for which the applicants are charged, status of investigation and role attributed to the applicants in commission of offence. Prima-facie no offence under Section 376 (2)(n) of the IPC attracted against the applicants. Allegations made in the complaint of committing forcible sexual intercourse are solely made against accused No.1-Ganesh.

7. If we consider the allegations made in the first information report then the applicants are alleged to have assisted the accused No.1-Ganesh in termination of pregnancy of informant. It is alleged that accused No.1 has procured pills from the medical shop of accused No.2 for aborting her pregnancy. Since her pregnancy could not be terminated by taking pills, the informant was taken to Baswakalyan, Karnataka State for termination of her pregnancy. It is alleged that the applicants have actively assisted the accused No.1-Ganesh in taking the informant to Baswakalyan in Karnataka State and facilitated in termination of her pregnancy against her consent. In that view the offence under Section 313 of the IPC only attracted against the applicants. Offences charged against the applicants are not punishable with sentence of life or death. The applicants/accused Nos. 2 and 3 are in jail since the month of September, 2019. In the facts and circumstances of the case and particularly looking to the fact that the informant was in physical relationship with accused No. 1 for a period of more than two years and alleged incident of termination of her pregnancy taken place about one year prior to lodging of complaint. It is

difficult to believe that undesired pregnancy of the applicant was terminated without her consent. The informant is educated woman and major in age. She has prosecuted study in engineering from Pune. In that view possibility of undesired pregnancy being terminated with her consent cannot be ruled out. There is delay of more than one year in lodging the complaint. The applicants have deep roots in the society. There is no possibility of their abscondance in the event of released on bail. It will take long time to proceed with the trial against the applicants. It is the contention of the applicant No. 3 that in Crime No. 17 of 2004 registered in the year 2004, the court has acquitted him in the year 2005. The another crime registered against the applicant is in respect of offence punishable under Sections 324, 323, 504 and 506 read with Section 34 of the IPC which itself not sufficient to brand the applicant as a person with criminal antecedents.

8. In view of the pandemic on account of Covid-19 the normal functioning of the court has been affected since the month of March, 2019. It will take long time to resume the normal functioning of the court. In that view it is not desirable to keep the applicants in jail till conclusion of the trial. Apprehension expressed by the prosecution that the applicants may pressurize the prosecution witnesses from deposing against them, same can be addressed by imposing certain conditions. Hence the following order is passed:

ORDER

- i. The applications are allowed.
- ii. The applicant/accused No.2-Shriram S/o. Uttam Valse and applicant/accused No.3-Gowardhan S/o. Nathrao Badgire arrested in crime No. 170 of 2020, registered at Latur Rural Police Station for the offences punishable under Sections 376(2)(n), 313 and 506 read with Section 34 of the Indian Penal Code, be released on each of them furnishing bail in the sum of Rs. 25,000/- [Rupees Twenty Five Thousand] with one surety in like amount on following conditions:
 - a] After release on bail, the applicants shall attend the Latur Rural Police Station once in a week on each Sunday in between 10.00 am to 11.00 am till filing of charge-sheet against them.
 - b] After filing of charge-sheet, the applicants shall record their appearance before the Officer-in-charge of Latur Rural Police Station on last day of each month in between 10.00 am to 11.00 am till conclusion of the trial against them.
 - c] The applicants shall not indulge into any act amounting to pressurizing or threatening the

prosecution witnesses.

d] The applicants shall furnish the names and address of their three close relatives with proof of their residential address alongwith bail bonds.

iii] In the event of breach of any of the conditions on the part of applicants the prosecution will be at liberty to move the sessions court for cancellation of bail of applicants.

iv] It is clarified that observations made in the order are made for limited purpose of deciding the present application and none of the observations to be treated as observations made as to the merit of the case of the prosecution against the applicants.

v] The applications are disposed of in above terms.

[V. L. ACHLIYA, J.]