

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1263 OF 2020

Anil s/o Hari Shinde

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. S. J. Salunke, Advocate for applicant.

Mr. S. W. Munde, APP for respondent – State.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24-11-2020

ORDER :

. Present application has been filed by the original accused under Section 439 of the Code of Criminal Procedure. Accused has been arrested in Crime No.119 of 2020 registered with Nava Mondha Police Station, Dist. Parbhani for the offences punishable under Sections 376, 327, 457 of Indian Penal Code.

2. Heard learned Advocate Mr. S. J. Salunke for applicant and learned APP Mr. S. W. Munde for respondent – State.

3. It has been vehemently submitted on behalf of the accused-applicant that the investigation is over and charge sheet has been filed. The informant is a

lady of 55 years. She has stated that she was residing alone and at the night time she had slept in her house by putting up latch from inside. When she woke up at about 11.30 p.m., she found that somebody had bent upon her person, gagged her mouth and, at that time, she saw the applicant. She says that she was raped and, thereafter, the applicant-accused has taken away her gold articles. If we consider the FIR, then it can be seen that there is delay in lodging the FIR. Further, she says that neighbours woke up when a tin box fall from the hands of the accused and when the neighbour came out, she had seen accused running away from the house of the informant. Medical report of the informant would show that there were no signs suggestive of use of force, however, sexual violence has not been ruled out, but it does not give a final opinion that something against the wish of the informant was committed. There were absolutely no injuries on the person of the informant. Possibility of false implication cannot be ruled out. The conduct of the prosecutrix is also required to be considered as to how she could not have raised human cry in resistance. If she would have raised cry, people would have come to rescue her. Under such circumstance, consensual relations between the applicant and prosecutrix cannot be ruled out. The applicant is in jail since 21-07-2020 and, therefore, he deserves to be released on bail, as the case will not be heard in near future.

4. Per contra, learned APP strongly opposed the application and submitted that the informant is aged 55 years, whereas the applicant is stated to

be aged 34 years. The applicant cannot take the defence of consensual relationship halfheartedly. Further, the FIR specifically state that the accused had gagged her mouth, then the question arises how she could have raised her voice. The statements of the neighbours would show that after they heard falling of tin box at night time from the house of the informant, they came out and thereafter some other persons also gathered, when voices were raised. They had seen the accused running away from the house of the informant. Therefore, this is not a fit case where the applicant should be released on bail.

5. Here, it is to be noted that the applicant has not specifically come with the case that there was illicit relation between him and the informant. Taking into consideration the age difference, we cannot readily infer it unless it is pleaded and then proved at the time of final hearing by the applicant, unless guess work regarding the same by learned Advocate for the applicant is not sufficient. The prosecutrix states that she is residing alone since about 1½ years, after death of her husband. She is earning by doing work as maid servant. The present applicant resides in the same lane (*Galli*) where the informant is residing. She has then stated as to what had happened on the day of incident at night time and, in fact, she states that she had slept by keeping the lights open as usual i.e. by putting on lights and by latching her house from inside. She woke up after her mouth was gagged. Further, the contents of the spot panchanama would show that the position of the latch to the door of the house of the

informant is put in such a way that latch can be opened from outside. The prosecutrix has then stated that after she was raped, when the accused was putting on his shirt, his hand touched a tin box and it fell down creating noise and, thereafter, the accused started running away from her house. In the meantime, the neighbour woke up and she had seen the accused running away from the house of the informant. The immediate disclosure about the incident by the prosecutrix is to the said neighbour and the statement of the neighbour is supporting the FIR regarding the disclosure. Further, when the voice were raised, the other neighbouring ladies had gathered and they have also stated the same facts. The medical report is in favour of the prosecution. Under such circumstance, when there is *prima facie* evidence collected against the accused, this cannot be a fit case, where the applicant should be released on bail. The manner in which the offence has been committed and the applicant is from the same vicinity, are the factors which are considered here. It is one of the heinous crime that has been committed. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm