

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

CRIMINAL APPLICATION (BA) NO. 114 OF 2020

(Shriram s/o Bhimrao Sadafale ..vs.. State of Maharashtra, through PSO, PS Dharni)

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

Court's or Judge's orders

Mr. D.S. Khushalani, Counsel for the applicant,
Mr. P.S. Tembhare, Addl.PP for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 05-11-2020

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Heard.

3. The applicant, who is in custody since 24-5-2019 in connection with Crime 202/2019 registered with Dharni Police Station, District Amravati for offences punishable under Sections 354-A, 354-C, 376(2)(f), 376(2)(l) and 324 read with Section 34 of the Indian Penal Code, is seeking regular bail.

4. The crime is registered on the basis of the complaint dated 22-5-2019 lodged by Ms. J., who is the physically challenged daughter of the applicant-accused.

5. The gist of the complaint is that Ms. J. is physically challenged and both legs are affected by the

disability. She has four sisters and one brother who are married. She did not marry in view of the physical disability and resided with her parents.

6. It is alleged in the report that the applicant ill-treated the informant since she was disabled. It is further alleged that the applicant uttered obscenities, demanded sexual favours and used to peep in the bathroom when the informant used to bathe.

It is alleged in the report dated 22-5-2019 that on 15-5-2019, she and her father-the applicant herein, were alone in the house. Her mother had gone to Walgaon to visit her sister. Ms. J. and the applicant had dinner and retired to bed. At 1-00 a.m. the applicant undressed Ms. J. and subjected her to forcible sexual intercourse and then went to the other room in the house and slept. Ms. J. disclosed the incident telephonically to her mother. In the morning, the applicant apologized and implored Ms. J. not to disclose the incident. However, since Ms. J. was suffering and seeking redressal of the injustice, at 8-00 p.m. on 21-5-2019 she told her mother that she is desirous of disclosing the incident to her sister Meena. Ms. J.'s mother assaulted her in order to deter her from visiting Meena. Ultimately, Ms. J. took the help of her sister Meena and lodged the report.

7. The investigation is complete and the charge-sheet is filed. While it would not be necessary to

minutely and forensically examined the material on record, some consideration is inevitable.

8. There are several circumstances which *prima facie* create serious doubt as regards the credibility of the allegation, grave as the allegation is. A father is accused of sexually assaulting his disabled daughter. Before I consider the circumstances, I must clearly state that the observations are only *prima facie* reflections and it is ultimately for the trial Court to come to a definite conclusion.

9. The delay in lodging the report is the first circumstance. The alleged incident occurred on 15-5-2019 and even according to Ms. J., it was only on 21-5-2019 that she told her mother that the incident is to be disclosed to Meena. The report is lodged on 22-5-2019. It is quite possible that during the course of the trial, the complainant and the prosecution would explain the delay. It must also be noted that delay in itself, particularly in sexual offences, is not fatal to the case of the prosecution, particularly in cases like the present case where the accused is the father and the victim is the disabled daughter. However, the delay in the present case will have to be considered in the context of the other circumstances on record.

The complainant preferred an application under Section 156(3) of the Criminal Procedure Code seeking

initiation of prosecution against five persons named in the said complaint. The applicant is not implicated therein. However, Meena the elder sister of Ms. J., i.e. the elder daughter of the applicant, is non-applicant-accused 5. The gist of the application under Section 156(3) of the Criminal Procedure Code is that on 15-5-2019 (which is the day on which the present applicant allegedly sexually assaulted Ms. J.) the non-applicants took advantage of the fact that her parents (the applicant and his wife) were not at home, criminally trespassed, heaped filthy abuses and then the accused, save and except accused 1, went out of the house. Accused 1 undressed Ms. J. and subjected her to forcible sexual intercourse. It is further alleged that for the next six to seven days accused 1 to 5 used to visit Ms. J's residence turn by turn to issue threats. It is further alleged that at 10-00 a.m. on 22-5-2019 accused 2 to 5 visited Ms. J's house and threatened her that should she file complaint against her brother or parents, she will be killed.

10. In essence, the prosecutrix is alleging that she was raped by her father on 15-5-2019 and in the same breath, she is also claiming that on the same day i.e. 15-5-2019 five others (there is no reference to applicant) including her elder sister Meena) threatened her and she was subjected to forcible sexual intercourse by one Ramesh who is named as non-applicant-accused 1 in the application under Section 156(3) of the Code. The

learned Magistrate directed an enquiry and it was found that the complaint lodged by Ms. J. is false and is engineered by her brother to settle political score. If Ms. J. is capable of levelling false allegations of rape, and that too, that she was raped on the same day on which she was allegedly raped by her father, there is no assurance that her allegations against the father are credible.

11. In any event, further incarceration of the applicant is not warranted. He is 65 years old and *prima facie*, there is enough room to argue that the case of the prosecution is tenuous.

12. I may reiterate that every observation in this order is only a *prima facie* expression, for the limited purpose of deciding the entitlement to bail.

13. The applicant has made out a case for grant of bail.

14. The application is allowed.

15. The applicant shall be released on bail on executing personal bond of Rs.25,000/- with a solvent surety of like amount. Considering the prevailing circumstances, the surety may be furnished within four weeks of the release.

16. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

17. The applicant shall attend each date of hearing scrupulously.

18. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

adgokar