

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

CRIMINAL APPLICATION (BA) NO. 963 OF 2020

(Sachin s/o Arjun Badhe ..vs.. State of Maharashtra, through PS Shegaon City, Shegaon)

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

Court's or Judge's orders

Mr. A.S. Londhe, Counsel for the applicant,
Mr. P.S. Tembhare, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 02-11-2020

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 25/5/2019 in connection with Crime 243/2019 registered with Police Station Shegaon City, District Buldhana for offences punishable under Sections 376(2)(n), 376(d), 377, 324, 323 and 506 read with Section 34 of Indian Penal Code, is seeking regular bail. The charge-sheet is filed on 21/8/2019. However, presumably due to the pandemic, there does not appear to be any significant progress in the trial.

4. The prosecutrix lodged report with Police Station Shegaon City on 25/5/2019. She alleged that she came to visit Gajanan Maharaj Temple along with her ten

years old son Gopal on 21/5/2019. On 24/5/2019 at 7.00 p.m. she and her son had dinner and were sitting in the premises of the temple. At 11.30 p.m. one person, who disclosed his name as Shankar Hande, approached her and offered to treat her with Juice. The son was asleep and the prosecutrix accompanied Shankar Hande to have Juice. Shankar Hande took her to the Railway bridge behind the temple. An auto rickshaw was parked there and two persons standing near the auto took the prosecutrix to an agricultural field near the Railway bridge. She was forcibly disrobed and when she resisted, she was assaulted by belt and fists. Her clothes were removed and the two persons, who were standing near the auto, subjected her to oral sex. The two persons then subjected her to forcible sexual intercourse one after the other. Shankar Hande followed them and subjected her to oral sex and forcible sexual intercourse.

5. I have considered and allowed the bail application of co-accused Nilesh Sahebro Ghule with the following observations :

“5. I have perused the material on record. While an elaborate and minute examination of the material may not be appropriate at this stage, brief reasons would have to be indicated for the order which I propose to pass.

6. Indubitably, there is medical evidence of physical assault as alleged, and the prosecutrix has suffered injuries all over the person. The injuries are

consistent with her allegation that she was assaulted with belt, slaps and fists. However, there is no medical evidence to suggest that she was subjected to forcible sexual intercourse. It is true, as submitted by Mr. N.B. Jawade, the learned Additional Public Prosecutor, considering that the complainant is a married woman and that she was helpless, the absence of injuries on the private parts is not decisive. However, considering the violent manner in which the rape has allegedly occurred, some tell tale signs are expected to be there on the private parts. This, of course, is a *prima facie* observation made for the limited purpose of deciding this application. While the allegation is extremely grave, it is not even the case of the prosecution that the applicant is otherwise a flight risk. It is not the case of the prosecution that the applicant had criminal antecedents. There is no material from which it can be inferred that the applicant shall tamper with the evidence or shall influence the complainant or any other witnesses. The trial is not likely to conclude in near future and indeed it would be unrealistic to hope that the trial would come to its logical end soon.

7. Considering that the applicant is in custody since 25/5/2019 and that although the charge-sheet is filed on 21/8/2019, there is apparently no significant progress in the trial and the attending circumstances noted supra, I am inclined to grant the bail.”

6. Mr. P.S. Tembhare, learned Additional Public Prosecutor fairly does not dispute that the applicant is similarly circumstanced to the co-accused, who is granted bail.

7. The application is allowed.

8. 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.

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

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

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

JUDGE

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