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

20 BAIL APPLICATION NO.155 OF 2021
WITH APPLN/506/2021 IN BA/155/2021

**BABLU @ ATUL RAJARAM CHAVAN
VERSUS
THE STATE OF MAHARASHTRA**

Advocate for Applicant : Mr. Sapkal Sandip R
Mr. SB Narwade, APP for Respondent-State
Mr. Mr. SS Dargad, Ad. h/for Mr. SG Chapalgaonkar,
Advocate to assist APP.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 8th March, 2021.

PER COURT :-

1. Criminal Application No.506/2021 filed to assist APP is allowed and disposed of.

2. The applicant has been arrested on 11.1.2021 in connection with CR No.21/2021 registered with Pahur police station District Jalgaon for the offences punishable under Sections 376 and 506 of IPC. He has filed the present application under Section 439 of Cr.P.C.

3. Heard learned Advocate Shri Sapkal for the applicant; learned APP Shri Narwade for Respondent-State, well assisted by Advocate Shri

Chapalgaonkar.

4. It has been vehemently submitted on behalf of the applicant that the informant is a major girl and comes with a case that the applicant, who is residing in the same vicinity, used to see towards her with ill-eye. But then also states that since they are from the same community, there used to be talks between them. She further states that in 1st week of November 2020, when she was coming back from answering nature's call around 8.30 pm, she was called by the applicant under the pretext that his mother is calling and thereafter when she went inside the house, the applicant has ravished her. He had thereafter threatened her to kill her and, therefore, she had not disclosed the said fact to anybody. However, taking into consideration her overall appearance, her paternal aunt made enquiry with her and then she revealed the true facts. The paternal aunt told the fact to other persons including the parents and then she has lodged the report. Thus, it can be seen from the FIR that there is considerable delay in lodging the report.

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Now, the investigation is over and charge sheet has been filed. The girl had lodged the non-cognizable complaint No.14/2021 on 10.1.2021, (i.e. the day prior to lodging the present FIR against the present applicant), for the offence punishable under Sections 500 and 506 of IPC against the applicant. But, at that time, she had given a different story. She had come with a case that her marriage was settled, however, the accused had given phone call to the bride-groom and told that the applicant is going to perform marriage and then also gave threat to that person. If the Medico Legal Certificate is considered, then it can be seen that before the Medical Officer, the informant has given a different story, which is in respect of love-affair between them. Under the said circumstance, the story, even at this stage, does not appear to be consistent. Except these pieces of evidence, the other evidence, which is in the form of the statements of the relatives of the informant would show only hear-say fact and, therefore, the applicant deserves to be released on bail.

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5. Per contra, the learned APP, who is well assisted by Mr. Dargad, holding for Advocate Mr. SG Chapalgaonkar, submitted that there is evidence against the present applicant. The prosecutrix is consistent in saying that the act of sexual intercourse by the present applicant is against her wish. In her statement under Section 164 of Cr.P.C. also, she has stated the said fact. The Medico Legal Certificate is supporting the prosecution and, therefore, the applicant deserves no sympathy.

6. At the outset, as on today, when the charge sheet is filed, there is room to presume that the further physical custody of the applicant is not required for the purpose of investigation. Under such circumstance, it is required to be considered as to what evidence has been collected against the present applicant. Perusal of the FIR would show that definitely there is delay in lodging the FIR. The informant is explaining the delay. However, whether it is fatal to the prosecution or not will have to be considered by the Trial Court. However, it can be definitely

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said that in the FIR, the prosecutrix had not come with a case of love-affair. Further, it can also be seen that in her NC report, lodged on 10.1.2021 also, she had not come with a case of love-affair between her and the applicant. In the history told before the Medical Officer, some different story is given. At this stage, this Court is unable to get under whose hand-writing the other history is written. But it gives different story in the sense that it states that love relationships are since last six years and sexual relations are from three years. There appears to be no further investigation by the Investigating Officer in this respect. In her statement under Section 164 of Cr.P.C., the prosecutrix has come with a story of love-affair. She has not stated as to since when it is. But, then specifically told that those relations were known to her parents. Further, she has also stated that in January-2021, another boy had come to see her. But the present applicant had given a phone call to that boy and told about the sexual relations between him and the prosecutrix and she also states that the said dialogues were recorded by the said boy and then that boy had made

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the father of the prosecutrix aware about those dialogues. Thus, it can be seen that she has changed her story from time to time. Under said circumstance, the applicant need not be asked to languish in jail as it would take long time for his trial to stand. Therefore, he deserves to be released on bail.

7. It will not be out of place to mention here that it appears that after the charge sheet was filed, statements of certain witnesses, including the statement of the prosecutrix, were recorded under Section 164 of Cr.P.C. They have been got recorded through Joint Civil Judge, Junior Division, Bhusawal on 8.2.2021.

8. Before making any comment, after considering the photo copies of those statements, this Court intends to see original statements and, therefore, Registrar (Judicial) of this Court is directed to call the original statements recorded in Pahur police station in CR No. 21/2021 by Joint Civil Judge, Junior Division, Bhusawal on 8.2.2021, as they are with the concerned Court up till now.

9. After getting instructions, learned APP submits that those original statements are part of the charge sheet and now the case is committed to the Court of Sessions and it is numbered as Sessions Case No. 31/2021 and it is pending before the District Judge-2 and Additional Sessions Judge, Jalgaon and, therefore, the original statements are required to be called from the said Court.

10. As aforesaid, the applicant deserves to be released on bail, following order is passed, -

ORDER

i. The Bail Application stands allowed.

ii. The applicant - BABLU @ ATUL RAJARAM CHAVAN be released on bail in connection with CR No.21/2021 registered with Pahur police station District Jalgaon for the offences punishable under Sections 376 and 506 of IPC on PR bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

iii. The applicant shall not indulge in any criminal activity nor shall tamper

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with the prosecution evidence in any manner.

iv. The applicant shall not enter in village Lihatanda, Tq. Jamner, District Jalgaon, and shall reside elsewhere, till conclusion of the trial.

v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give his complete address of the place of his residence where he intends to reside till end of the trial.

vi. The applicant shall also give the said information to the Investigating officer along with mobile number and shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial court.

11. As regards the further action to be taken in respect of the statements under Section 164 of Cr.P.C. is concerned, the matter to come up before this Court on 16.3.2021, before which date, the

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learned Registrar (Judicial) of this Court to call the original papers of Sessions Case No.31/2021, especially the original Statements of the witnesses recorded under Section 164 of Cr.P.C. from the Court of District Judge-2 and Additional Sessions Judge, Jalgaon.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV