

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.428 OF 2021

CHAGAN S/O YAMAJI AVACHAR
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. V. P. Sawant, Advocate for the applicant.
Mr. A. M. Phule, for the respondent – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-05-2021

ORDER :-

. Present applicant has been arrested on 18.01.2021 in connection with Crime No.13 of 2021 registered with Majalgaon Rural Police Station, Dist. Beed for the offences punishable under Sections 376(2) (N), 376(D), 354(B), 452, 323, 504, 506 of Indian Penal Code. He has filed this second application for bail under Section 439 of the Code of Criminal Procedure. It will not be out of place to mention here that the present applicant had earlier filed Bail Application No.173 of 2021 before this Court and after hearing the learned Advocate for sometime, when this Court had shown its disinclination, the learned Advocate for the applicant, on instructions, had withdrawn the said application on 03.03.2021.

2. Heard learned Advocate Mr. V. P. Sawant for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that the allegations of rape have not been made against the present applicant, but it is against the co-accused Karan Kshirsagar. This fact was not properly brought before this Court earlier and, thereafter, after disinclination was shown, the earlier application was withdrawn. When co-accused only had committed intercourse, further physical custody of the applicant is not required. Further, it can be seen from the FIR itself that huge amount was taken by the husband of the informant – prosecutrix, but she has lodged the said report just to avoid work with the present applicant, who had taken the contract to supply labours for sugarcane cutting work. It is the false implication that has been made against him. There is no question of tampering with the evidence of the prosecution as the prosecutrix resides at a different village and the present applicant resides at a different village. The charge-sheet filed has been committed to the Court of Sessions vide Sessions Case No.42 of 2021, however, it would take long time to stand the trial and, therefore, the bail application be considered.

4. Per contra, the learned APP strongly opposed the application and submitted that when this Court had shown its disinclination to grant any kind of relief to this applicant at the earlier round, now without any change in the circumstance, the applicant cannot approach this Court once again and no necessity to show any kind of sympathy to him. The contents of the FIR are very much clear. The applicant is the labour contractor under whom the prosecutrix and her husband were working. Since about two months prior to the FIR, they were cutting the sugarcane grown around Talkhed, Tq. Majalgaon, Dist. Beed. A tractor was given to their group for transportation of sugarcane, which would be cut by them. Karan Kshirsagar was the driver on that tractor. She has stated that on 16.01.2021, tractor had come at about 8.00 p.m. to 9.00 p.m. to take them to the place of work. She stayed in her hut as she was not feeling well, but her husband and other six persons went in the tractor at a distance of about one and half kilometers to cut the sugarcane. She says that around 10.00 p.m., when she was in her hut, present applicant went inside and started saying that she should allow him to have sexual intercourse with her. He started manhandling her. She was resisting him by saying that she is married and has son it would not be proper for her marital life, but then by giving slaps to her, he put knife on her neck, abused her and started giving threats to kill.

Thereafter, he went outside the hut and called the co-accused – Karan Kshirsagar. Karan came inside the hut and raped her twice with a time gap of one hour. Till then, the present applicant was standing outside the hut. She says that both the accused went from that place around 1.00 a.m. Her husband returned at about 3.00 a.m. to whom she narrated the entire incident and, thereafter, it appears that she has lodged the report on the next date.

5. Thus, it is to be noted from the contents of the FIR that the role attributed to the present applicant is to facilitate co-accused to ravish the lady. When, in fact, he himself had the intention to commit rape on her, but then by giving threats he went outside, he was guarding the hut till the co-accused did the act. All these acts attributed to the present applicant are heinous. Further, when her husband was still working with the present applicant where was the question of intention on the part of the prosecutrix and her husband to leave the group of this applicant. As regards the defence of false implication is concerned, it is for the applicant to prove it at the time of trial. As regards the medical examination is concerned, it is to be noted that the informant has given the same story to the medical officer. Though she has given name of co-accused Karan Kshirsagar only, that medical report would definitely be concerned with the co-accused. Definitely, the informant is not levelling

the charges of rape on the present applicant, but she specifically states that present applicant had facilitated the co-accused to commit the offence against her. Therefore, taking into consideration this aspect, the present application deserves to be rejected.

6. It will not be out of place to mention here that taking into consideration all this material, which is now placed before this Court, this Court had shown disinclination to grant any kind of relief and, therefore, on instructions, the concerned Advocate had withdrawn the earlier application. There is absolutely no change in the circumstance, merely by the changing the Advocate, the applicant cannot take a chance for getting bail. The facts are same and, therefore, the result would be same. Hence, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm