

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

BAIL APPLICATION NO. 429 OF 2021

Ajit @ Pappu Rangnath Falke,
Age : 33 yrs, Occ. Agriculture,
R/o. Mulvehara, Post – Bramhanwada,
Tal. Akole, Dist. Ahmednagar.

... APPLICANT
(org. accused)

VERSUS

The State of Maharashtra,
Through Police Station Officer
Akole Police Station,
Dist. Ahmednagar.

.... RESPONDENT

Shri. N. V. Gaware, Advocate for the applicant
Shri. S. P. Sonpawale, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.

RESERVED ON : 23rd August, 2021

PRONOUNCED ON : 8th September, 2021

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. Facts leading to this application are that informant, aged 65 years, is the mother of the victim. The victim is a mentally challenged woman aged 32 years. Informant is a widow.

3. It is the prosecution case that in the month of April when she was working in the field, her relative Sopan Gawande (accused No. 2) told her that the victim told him that applicant had gone to her house on the pretext of drinking water and committed rape on her. When she came home and asked the victim, she told the informant that the applicant had committed rape on her on the pretext of drinking water. Thereafter, she went to the applicant and confronted the applicant, the applicant said that he had gone to the victim only for drinking water and after drinking water he came back. On 13th August, 2020, the victim had stomachache, on account of which, victim was examined by a Medical Practitioner and it was revealed that she was pregnant of six months. Victim told her that applicant raped her many times. On these allegations FIR came to be lodged on 16th August, 2020 on the basis of which offence under Sections 376, 451 and 506 of the Indian Penal Code came to be registered against the applicant.

4. During investigation, it was revealed that accused No. 2 also had established sexual relations with the victim.

Therefore, accused No. 2 was arrested. Samples of blood and semen of applicant and accused No. 2 Sopan Gawande were collected and referred to Chemical Analyzer for report. The report of the Chemical Analyzer was received and it was revealed that the victim was pregnant from accused No. 2 Sopan Gawande.

5. Heard learned counsel Shri. Gaware for the applicant and Shri. Sonpawale, learned APP for the respondent/State.

6. Shri. Gaware, learned counsel for the applicant submitted that applicant has been framed by accused No. 2. Applicant is working with accused No. 2 as labourer. Accused No. 2 was the first person to tell the informant about the involvement of applicant in the commission of the offence. Despite knowing that accused No. 2 himself is the offender, he conveniently shielded himself and implicated applicant who is innocent. He submitted that CA report is against accused No. 2 and not against the applicant, applicant deserves to be released on bail. He placed reliance on the case of *Sunil Vs. State of Madhya Pradesh, 2016*

DGLS(SC)575, Premjibhai Bachubahi Khasiya Vs. State of Gujrat and Anr., 2019 DGLS (Guj.) 15 and Bhanudas Gangaram Bhise Vs. The State of Maharashtra in Bail Application No. 230 of 2020, Bombay High Court, Bench at Aurangabad .

7. Learned APP Shri. Sonpawale submitted that statement of the victim, who is mentally challenged, was recorded by an expert before the Magistrate and in that statement she narrated the name of the applicant. She has been consistently making allegations against the applicant. He submitted that even if CA report is in the negative so far as applicant is concerned, the other evidence clearly suggests his involvement.

8. In the case of ***Sunil Vs. State of Madhya Pradesh, 2016 DGLS(SC)575***, the Hon'ble Apex Court has observed thus :

“4. From the provisions of Section 53A of the Code and the decision of this Court in Krishan Kumar (supra) it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result

in the failure of the prosecution case. As held in Krishan Kumar (para 44) Section 53A really facilitates the prosecution to prove its case, A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."

9. In the Case of *Premjibhai Bachubahi Khasiya Vs. State of Gujrat and Anr., 2019 DGLS (Guj.) 15*, Gujrat High Court has observed that the positive D.N.A. report can be of great significance when there is supporting evidence, depending of course on the strength and quality of that evidence, even if it is positive, it cannot conclusively fix the identity of the miscreant, but if the report is negative, it would conclusively exonerate the accused from the involvement or charge.

10. In the case of *Bhanudas Gangaram Bhise Vs. The State of Maharashtra*, there were two accused and against one of the accused CA report showed that, that accused was

biological father of the child and that other accused was not biological father of that child. Therefore, this Court held that case was made out for bail.

11. In the case at hand the applicant had gone to the house of the informant. It is alleged that applicant had sexual intercourse with the victim. The victim is a mentally challenged woman. Her statement was recorded by an expert in which she stated that applicant was the person who had sexual relations with her multiple times. The statement of the victim was recorded under Section 164 of the Criminal Procedure Code before the Magistrate with the help of an expert in the field. In the statement under Section 164 of the Code of Criminal Procedure she has stated that the applicant and accused No. 2 used to sit on her person, used to ask her to remove her knickers and used to commit rape on her. Thus, there is *prima facie* case against the applicant. Just because report is negative against the applicant and that he is not biological father of the applicant it does not mean that other material against the applicant cannot be considered. In the case of ***Sunil Vs. State of***

Madhya Pradesh (supra) the Hon'ble Supreme Court has observed that even if the result of the test is in the negative the weight of the other materials and evidence on record will have to be considered. In the case at hand victim is a mentally challenged woman. Informant is a widow. The FIR states that when the informant goes for labour work, the victim is alone at home. In such circumstances if the applicant is released on bail the possibility of pressurising her cannot be ruled out. The victim in her statement under Section 164 of the Code of Criminal Procedure has already stated that the applicant and accused No. 2 used to beat her. In view of this, this is not a case in which discretion can be exercised in favour of the applicant. Hence the order.

ORDER

. Application is rejected.

[M. G. SEWLIKAR, J.]

ssp