

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

BAIL APPLICATION NO.880 OF 2021

Hanmant s/o Bapurao Bhadre = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.HV Patil,Advocate for Applicant;

Mrs.Vaishali Patil-Jadhav,APP for Respondent.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 6th December, 2021.

PER COURT :-

1. Present application has been filed under Section 439 of Cr.P.C. The bail application earlier filed by the applicant, i.e. Bail Application No.1539/2020 was disposed of as withdrawn on 25.1.2021 as this Court was not inclined to grant relief and prayer was made to withdraw the application.

2. Heard learned Advocate and learned APP appearing for the respective parties.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR and

(2)

the other documents would show that the applicant has been falsely implicated. However, if we consider the CA report, which is now produced, then it is not supporting the prosecution. It has been contended that the victim is deaf and dumb; yet her statement is recorded without any assistance. In fact, the informant and her family was working as labour with the applicant, who was mason by profession. There were disputes regarding payments and, therefore, a false case has been lodged. The applicant is behind the bars since 14.8.2020 and, therefore, he be released on bail. He is ready to abide by the terms of bail.

4. Per contra, learned APP strongly objected the application and submitted that when this Court showed dis-inclination, even at that time, this Court had perused the charge sheet. Now, there is no change in the circumstances. Though the CA reports have been filed; yet they cannot take place of oral evidence that has been collected. The medical report is in favour of the prosecution. When there is a strong case against the applicant-accused, he cannot claim bail as of right.

5. It is to be noted that the FIR has been lodged by the sister-in-law of the victim. She states that she resides with her parents in laws and two sisters in law. Out of them, the victim is deaf and dumb. The incident had taken place on 12.8.2020. The informant and her husband had come back from her parental house around 1.00 pm she could see male *chappal*(foot-wear) in her court-yard and, therefore, she by pushing the door went inside the house and she saw that the applicant-accused was having sexual intercourse with the victim. The informant dragged the applicant from the person of the victim and at that time, the applicant had assaulted her and ran away from the place of occurrence. Though the informant raised her voice, as the neighbours had gone to the field and, therefore, nobody came except mother-in-law of the informant. Husband of the informant came back around 3.00 pm and he was informed about the incident. The victim was not in a mental condition and, therefore, they lodged the report on the next day, ie.. on 13.8.2020. Thus, it can be seen that there is almost an eye-witness to the incident. Under such circumstance, the CA reports, even if we

(4)

take them as against the prosecution; yet the basic nature of those reports being corroborative, will have less evidentiary value as compared to the substantial evidence. It is also to be noted that the statement of the victim has been recorded with the help of Headmaster of the School for specially challenged persons. One of the factors, that was tried to be agitated, is that there were no marks of violence on the person of the victim. It is to be further noted from the FIR itself that when the informant went inside the house, she could find that the applicant was having sexual intercourse with the victim on an iron-cot. Though in the spot panchanama, it is not stated as to whether there was any mattress on the cot, but the mattress/quilt (*Godhadi*) has been seized in this case. If this was the article, which was on the cot, then expectations of mark of violence on the part of body of the victim, which would not come in contact of cot, are not proper at all. Further, taking into consideration the physical constrains of the victim, possibility cannot be ruled out that she would have succumbed to the pressure or force that would have been applied by the applicant and,

(5)

therefore, on such considerations, bail cannot be granted. There appears to be *prima facie* case against the applicant-accused and, therefore, the application deserves to be rejected and it is accordingly rejected. Needless to say that whatever observations made by this Court are on the basis of the documents which are before this Court and the same shall not be influenced by the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV