

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 BAIL APPLICATION NO. 1299 OF 2020
WITH APPLN/15/2021 IN BA/1299/2020

ABDUL MATEEN S/O ABDUL SALIMSAB
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Thorat Chandrakant R.
APP for Respondent-State : Mr. A. S. Shinde
Advocate to Assist APP : Mr. Shoail Subhedar h/f
Mr. Kuldip S. Kahalekar

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CORAM : V. K. JADHAV, J.
DATED : 05TH JANUARY, 2021

PER COURT :-

1. Heard learned counsel for the applicant in Criminal Application No. 15 of 2021. For the reasons stated in the application, the same is allowed in terms of prayer clause “B” and disposed off accordingly.

2. The applicant in bail application No. 1299 of 2020 is seeking regular bail in connection with Crime No. 144 of 2020 registered with Naigaon Police Station, District Nanded for the offence punishable under Sections 376(2) (n), 313, 504, 507 read with 34 of IPC. His application with similar

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prayer bearing Criminal Bail Application No. 182 of 2020 came to be rejected by the Additional Sessions Judge, Biloli vide order dated 19.10.2020.

3. Learned counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. The applicant is in jail in connection with the present crime since 29.07.2020. Learned counsel submits that the applicant and the informant/victim were knowing each other since long. The applicant and the informant/victim are the cousins and the informant/victim was knowing the applicant since she was in 7th standard. Learned counsel submits that the incident allegedly took place in the year 2012 onwards. There is an inordinate delay in lodging the complaint which is not explained by the informant/victim. Learned counsel submits that as per the allegations made in the complaint, in the years 2012, 2014 and 2016, the informant/victim became pregnant. However, she never disclosed the same to her parents or any member of the family. It has been alleged that in the year 2020, the

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informant/victim again conceived. However, the applicant started avoiding her and further kept sexual relations with her against her will. Learned counsel submits that these allegations are *prima facie* unbelievable. Learned counsel submits that in the given set of allegations, the possibility of consensual sexual relations cannot be ruled out. The informant/victim is 26 years of age. She knows the consequences of her sexual relations with the applicant. Learned counsel submits that even twice the informant/victim had an occasion to report the incident to the police, however, she had avoided to lodge the complaint. Even though the concerned Medical Officer had informed the informant/victim while causing medical termination of pregnancy, however, the victim had refused to lodge complaint against the applicant. Learned counsel submits that the applicant is in jail for a considerable period and his further detention in jail is uncalled for. There are no antecedents. The applicant is ready to abide the conditions, if imposed by this Court while enlarging him on bail. The applicant may be released on bail.

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4. Learned APP assisted by Mr. Shoail Subhedar h/f Mr. Kuldip S. Kahalekar, learned counsel, has strongly resisted the application on the ground that the applicant and the victim are the cousins. The applicant has taken undue advantage of the same and established sexual relations with the informant/victim. The applicant has given false promise of marriage to the informant/victim right from the year 2012 and performed sexual intercourse with her under the said false promise of marriage. Even though the informant/victim has become pregnant for third time, however, due to the relations and so also the promise of marriage given by the applicant, has not lodged any complaint against him, nor informed to the members of her family. On 07.07.2020, the applicant has committed forcible sexual intercourse with the victim on the terrace of the house and she became pregnant. Even the applicant allegedly forced her for termination of pregnancy by giving her certain tablets. The applicant has thereafter flatly refused to marry her. Learned APP submits that the allegations are serious in nature. *Prima facie*, there
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is strong case against the applicant. The applicant may not be released on bail.

5. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that the informant/victim and the applicant are the cousins and they had sexual relations since the year 2012. It is pertinent that even though the victim allegedly conceived three times out of their sexual relations, neither she had disclosed the said fact to the family members, nor lodged any complaint against the applicant. *Prima facie*, it is difficult to believe that the victim has avoided to lodge complaint or to inform the family members simply because the applicant had given her promise of marriage. Further, though there is a reference in the FIR of forcible intercourse against the will of the informant/victim on 07.07.2020 on the terrace of the house, the victim has not immediately informed the family members nor lodged complaint against the applicant. However, it is for the trial court to consider the allegations made by the victim coupled with the medical evidence on its own merits.

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However, considering the nature of allegations, as discussed above, case is made out to grant bail to the applicant with certain conditions.

6. Learned APP at this stage submits that the applicant and the victim are residing in the same locality and therefore, appropriate condition may be imposed to avoid the possibility of tampering with the prosecution evidence. Thus, considering the same, it would be just and appropriate if the entry of the applicant is restricted in Naigaon town, except for attending court dates before the Magistrate till the case is committed. Hence, I proceed to pass the following order.

O R D E R

I. The application is hereby allowed.

II. The applicant ABDUL MATEEN S/O ABDUL SALIMSAB be released on bail in connection with Crime No. 144 of 2020 registered with Naigaon Police Station, District Nanded for the offence punishable under Sections 376(2)(n), 313,

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504, 507 read with 34 of IPC. on his furnishing P.B. of Rs.20,000/- with one solvent surety of the like amount on the following conditions :-

a] The applicant shall not tamper with the prosecution evidence in any manner.

b] The applicant shall not make an attempt to meet or communicate the victim in any manner till conclusion of the trial.

c] The applicant shall not enter within the limits of Naigaon town, District Nanded till conclusion of the trial, except for attending the court dates before the Magistrate till committal of the case to the Sessions Court.

III. Application is accordingly disposed off.

(V. K. JADHAV, J.)

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