

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1379 OF 2020

Rajjak Chivalya Kale = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.RR Karpe, Advocate for Applicant/s;

Mr.SB Narwade,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 1st February, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.153/2020 dated 5.3.2020 registered with Karjat Police Station, Tq. Karjat, District Ahmednagar for the offences punishable under Sections 376(D) and 394 of IPC. He has filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate Mr. RR Karpe for the applicant and learned APP Mr. SB Narwade, for Respondent-State.

3. It has been vehemently submitted on

(2)

behalf of the applicant that the applicant has been falsely involved in the alleged crime. The applicant as well as the informant are members of Pardhi community. The informant herself is an habitual offender and has committed several illegal acts. She is in habit of lodging reports against other persons on similar lines. In fact, wife of the present applicant has also lodged a non-cognizable report against the informant for demanding an amount of Rs.1,00,000/- as ransom for withdrawing the FIR against the applicant. If we consider the FIR, then the alleged act of rape is not made attributable to the present applicant. The investigation is complete and charge sheet has been filed. The applicant was arrested on 19.4.2020 and now he is in Magisterial custody. Nothing is recovered at the instance of the present applicant. The medical report is also not supporting the prosecution and, therefore, the learned Advocate for the applicant prayed for releasing the applicant on bail.

4. The learned APP strongly opposed the application and submitted that though the

(3)

investigation is over and charge sheet is filed; yet there is ample evidence against the present applicant which shows that, he along with co-accused, has committed gang rape on the prosecuteix. The medical report rather supports the story given by the prosecutrix in the FIR. She had given the same history before the Medical officer also. There is no delay in lodging the FIR. Merely because there might be some offence registered against her, that does not mean that her FIR is false. The present applicant is also habitual offender. CR No.11/2012 under Section 306 etc. of IPC is registered against him at Karjat police station and for the offence under Section 395 of IPC, vide CR No.38/2012 has been registered against him with Baramati police station, District Pune. He committed one of the heinous crimes and, therefore, he does not deserve any kind of sympathy.

5. It is to be noted from the FIR that the informant is a married lady and she says that her husband was arrested by police in a case and, therefore, she was proceeding for making

(4)

arrangement for his surety on 5.3.2020 at about 10.30 am. He was knowing all the accused persons. She was intercepted by co-accused and was dragged inside pomegranate garden. Present applicant had snatched her gold ear-rings and made her lie on the ground. She further states that three accused persons, including the present applicant, had torn her blouse and had pressed her breast. In the FIR, she further states that other three co-accused had forcibly raped her and one of the accused had inserted knife in her vagina, as a result of which, she had become unconscious and then she regained her consciousness after some time. She called her mother by giving a call on mobile. After her mother arrived with rickshaw, she was taken to Government Hospital in Karjat. In her supplementary statement she has specifically stated that the present applicant had also committed rape on her. The FIR is not an encyclopedia and, therefore, her supplementary statement is also required to be considered. The statements of her mother and some other witnesses support her statement. Though mother had arrived at the place of occurrence after she was contacted by the informant, but then she

(5)

has stated about the condition of her daughter in her statement. As regards the alleged criminal antecedents of the informant is concerned, it does not wash away her FIR at this stage. The medical certificate appears to be provisional in nature and it says about nine injuries on her person. There were multiple abrasions on her body. 9th injury is incised wound on right libia majora, which can be stated to be consistent with her story. The statement of the auto rickshaw driver is also taken, who was along with mother of the prosecutrix. Therefore, there is evidence to support the prosecution story.

6. Another fact that is required to be noted is that there are criminal antecedents against the present applicant and further in this case itself when the charge sheet is called from learned Additional Sessions Judge, Shrigonda, it can be seen that the case is committed to the Court of Sessions and now it is numbered as Sessions Case No.17/2020. It shows that the present applicant was absconding and the learned JMFC had issued standing warrant against the present applicant on

(6)

17.4.2020. However, it appears from the further documents that he was arrested in pursuance of the standing warrant on 19.4.2020. Therefore, possibility of the applicant getting absconding cannot be ruled out. No case is made out to grant discretionary relief to the applicant. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV