

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 BAIL APPLICATION NO.1530 OF 2020

KIRAN KISHAN BHUMRE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. J.M. Murkute, Advocate for applicant

Mr. S.Y. Mahajan, APP for respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th JANUARY, 2021.

PER COURT :

1 Applicant has been arrested, in connection with Crime No.496/2020 dated 19.11.2020 registered with Gangakhed Police Station, Dist. Parbhani, for the offence punishable under Section 376(2)(n), 323, 504, 506 of the Indian Penal Code.

2 Heard learned Advocate Mr. J.M. Murkute for the applicant and learned APP Mr. S.Y. Mahajan for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the allegations against the present applicant are that the informant was raped by the applicant since last one and half year repeatedly, by giving her false

promise of marriage. Perusal of the First Information Report would show that there is delay of three days from the alleged last incident of sexual intercourse. If we consider the entire facts, then the relationship is stated to have started since about one and half years, but in the meantime, she never made any attempt to lodge the FIR, contending that each time it was a forceful or without consent act. In fact, the accused was externed from Parbhani district, Beed district as well as Latur district, and therefore, it is hard to believe that he would have repeatedly committed rape on her since last one and half years. On the offences under Gambling Act he has been externed. He is not an habitual offender. Possibility of consensual act cannot be ruled out. Therefore, the learned Advocate canvassed for granting bail under Section 439 of the Code of Criminal Procedure to the applicant.

4 Per contra, the learned APP strongly opposed the application and submitted that when the accused has been externed that itself shows that he is an hardened criminal, and therefore, he cannot deserve any sympathy. The investigation is still pending and the physical custody of the applicant is further required. By giving false promises of marriage he has solicited sexual intercourse from the informant.

5 Perusal of the First Information Report would show that the informant is a 22 years old lady. She was married, however, she says that she

is not residing with her husband, but came back to reside with her parents. She got acquainted with accused about one and half years prior to the date of FIR. She states that the accused developed friendship with her and about four months after they got acquaintance with each other, under the promise to marry, he had kept sexual intercourse with her. According to her, she had not consented for the same. But it appears that she has not lodged any report regarding that incident. It is not clear from her FIR, as to whether she had taken any steps to get divorce from her husband. In the FIR she further states that accused used to visit her house and disclose it to her parents that he is going to marry her and by giving threats he used to take her away from her house and at different places he had sexual intercourse with her. Whenever she used to ask about the marriage, at that time, he used to avoid. He had taken her to Pune under the pretext to marry and then she says that she had gone along with her son. That means, she has a son from her husband and then says that she was kept in a room at Sadesatra Nali, Hadapsar, Pune by the accused. It appears that they had started residing as husband and wife. He was doing work there, and even at that place under the pretext to marry he had committed sexual intercourse with her. He brought her back to Gangakhed after two months and left her to her parents. She then says that as her parents were defamed they shifted their house; yet, even at that place, by giving threats to her parents, he used to take her away

and used to keep sexual physical relations with her and the last act is stated to be at one Anand Lodge on 16.11.2020. Important point to be noted is that if the contents of the FIR are taken as it is, it is stated that even her parents were threatened. Nobody has lodged report uptill now, and therefore, taking into consideration the contents the possibility of having consensual act cannot be ruled out. Sufficient opportunity was given to the prosecution to have investigation as against the present applicant. His further physical custody is not required, and therefore, he deserves to be released on bail. Hence, following order.

ORDER

- 1 Application stands allowed.
- 2 Applicant Kiran Kishan Bhumre, who has been arrested in connection with Crime No.496/2020 dated 19.11.2020 registered with Gangakhed Police Station, Dist. Parbhani, for the offence punishable under Section 376(2)(n), 323, 504, 506 of the Indian Penal Code, be released on PR. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.
- 3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 If he commits any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 He shall not enter the jurisdiction of Gangakhed till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number. So also he should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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