

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1728 OF 2021**

Pradip Balasaheb Patil .. Applicant

Vs.

The State of Maharashtra .. Respondent

...

Mr. Atul Patil for the Applicant.

Mr. A.R. Kapadnis, A.P.P. for the State.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 07TH JULY, 2021.

P.C:-

1. Being arrested on 31/01/2021 in C.R. No.52 of 2021 and subsequently charge-sheeted for the offences punishable under Section 376, 447 and 506 of the IPC, the Applicant is seeking his release on bail.

2. The prosecutrix lodged a complaint alleging that on 31/01/2021, when she was picking up the grass in *jawar* field, near the village at 11.00 a.m., the Applicant arrived at the spot

and committed forcible sexual intercourse with her by removing her clothes. Her version is that she attempted to resist, but he overpowered her and though she attempted to raise cries for help, since nobody was around, no one came to her rescue. While leaving the spot, according to the prosecutrix, the Applicant said that for a long time, he had the desire to have sex with her and, today, he has accomplished it. She went to her house, weeping and narrated the incident to her husband and other villagers and lodged the complaint.

3. During investigation, the Investigating Officer recorded several statements, which included the statements of witnesses, who had seen the Applicant near the agricultural field of the prosecutrix's husband, riding a motorcycle. There are, at least, the statements of three witnesses, who state that they had seen the Applicant near the agricultural field of the prosecutrix. If these witnesses have stated that they were working in the field, it is surprising as to why they did not hear the helpless cries of the prosecutrix, when she was sexually assaulted, but her version is that no one was present nearby and, therefore, she did not seek help by shouting.

Another glaring flaw, to which my attention is invited, is the spot panchanama prepared by the Investigating Officer on the date of the incident itself. The spot panchanama mention about the agricultural field with *jawar* crops standing therein and it records that the standing crop was laid flat on account of the

incident and the pieces of bangles are also scattered on the spot. A diary belonging to the Applicant is also found lying on the spot, which came to be seized. In column No.9 of the spot panchanama, what is drawn is map of a house, with one bedroom, kitchen and one sitting room and the spot of incident is shown to be the bedroom. On the eastern side, the land of the husband of the prosecutrix Kakade is mentioned.

The said spot panchanama creates a huge dent in the case of the prosecution and the effect of the same could be only ascertained at the time of trial.

However, with such a glaring lacuna create a doubt on the recovery of the articles, like the diary and pieces of bangles and, therefore, that piece of evidence cannot inculcate the present Applicant, at this stage.

4. In any contingency, in the present C.R., the investigation is complete and the charge-sheet has been filed. The Applicant is behind bar since 31/01/2021 and considering the fact that the prosecutrix is aged 42 years, who complain of forcible sexual assault and she faces no danger on release of the Applicant, the Applicant is entitled to be released on bail subject to the following conditions and also subject to a stipulation that he will not enter in the area, where the prosecutrix is residing i.e. Tambewadi, Taluka Barshi, Dist. Solapur and keep himself away from the said place, during the pendency of the trial.

ORDER

(a) The Applicant – **Pradip Balasaheb Patil**, shall be released on bail in C.R. No.52 of 2021 registered with Vairag Police Station Police Station, District Solapur on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.

(b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall not enter the area of Tambewadi, Tal. Barshi, Dist. Solapur, where the prosecutrix resides and shall make no attempt to contact her in any manner.

5. The Application is allowed in the aforestated terms.

6. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]