

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.771 OF 2021

MANGESH BABAN JADHAV

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Vaibhav Gaikwad, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 22nd NOVEMBER 2021
PRONOUNCED ON : 30th NOVEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.191 of 2017 registered with Police Station Dahiwadi, Satara, for offences punishable under Section 376(d), 366 and 506 of the Indian Penal Code (IPC).

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2 It is the case of prosecution that on 20th June 2017, at about 11.30 p.m., the prosecutrix was watching Television. Her great grandmother-in-law and her children aged 9 years and 6 years were sleeping. At that time, somebody knocked the door. When she opened the door, she found her cousin, namely, Maruti Nana Jadhav (A-1) along with two persons, namely, Kashya @ Kashinath Sonba Jadhav (A-2) and Mangya @ Mangesh Baban Jadhav (A-3) (present applicant). Maruti Jadhav (A-1) then asked the prosecutrix to tell aunt that Dilip would not be coming and the prosecutrix replied that she would convey the same on the next morning. Accused Maruti then started going back from there. However, prosecution alleges, out of the other two persons, one person pressed her mouth and another lifted her and took her to the field of Shankar Nana Mohite. It is further alleged that cousin of prosecutrix i.e. accused Maruti Jadhav made her lie on the ground despite her resistance and threatened her that if she raises commotion, he would kill her and thereafter forcibly ravished her. It is further alleged that the other said two persons i.e. Kashya and Mangya then lifted her and took her in

the field of Vyankat Nana Mohite and there they also ravished her turn by turn and also threatened that if the incident was disclosed, they would kill her. On the next day, the prosecutrix lodged the report accordingly.

3 Mr.Vaibhav Gaikwad, learned counsel for the applicant, submits that there is no medical evidence to suggest that the prosecutrix was subjected to sexual assault. Even the report of Chemical Analyzer does not further the case of the prosecution, in as much as, all reports are negative. According to the learned counsel, neither the statement of family members nor the neighbours were recorded. The applicant is in jail for more than four years and for all these reasons, the applicant deserves to be released on bail.

4 Mr.Dedhia, learned APP, on the other hand, opposed the submissions by contending that the role of applicant is clearly spelled out by the prosecutrix while lodging the report. To support, apart from this, there is also extra-judicial confession

which is apparent from the statement of Mukesh Waman Phadtare which also supports the case of prosecution. Having regard to the seriousness of offence, the application is liable to be rejected.

5 Perused the investigation papers. From the First Information Report (FIR) it is clear that on 20th June 2017 the present applicant along with other accused had visited the house of informant, at about 11.30 p.m. It is also apparent from the FIR that the great grandmother-in-law of the prosecutrix and her minor children who were 9 years and 6 years old, were sleeping in the house. Cousin of the prosecutrix namely, Maruti Nana Jadhav knocked the door and accordingly she opened the door. The role of each accused is very clearly elaborated by the prosecutrix. Not only her own cousin ravished her but the applicant and other accused also took their turn to assault her sexually. It is also pertinent to note that the FIR came to be lodged immediately on the next day.

6 As far as the submission of learned counsel for applicant that the medical evidence and Chemical Analyzer's Report do not support, one cannot lose sight of the fact that the prosecutrix is a married woman. Secondly, how much evidentiary value should be given to the Chemical Analyzer's Report will be a matter of trial. Even if I exclude the so called extra judicial confession then also I have no reason to disbelieve the contents of the FIR at this stage, which was promptly filed on the very next day of the incident.

7 In view of above, I do not find merit in the application. Hence, I pass the following order :

ORDER

- (i) The application is rejected.
- (ii) The learned trial Court to expedite the trial.
- (iii) The application stands disposed off accordingly.

(V. G. BISHT, J.)