

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1043 OF 2020

Ganesh Balu Mane	 Applicant
Versus	
The State of Maharashtra	 Respondent

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WITH

CRIMINAL BAIL APPLICATION NO.1049 OF 2020

1. Shashikant Bapu Jadhav, &	
2. Babaji Murari Dhangar	 Applicants
Versus	
The State of Maharashtra	 Respondent

Mr. Sachin H. Deokar, Advocate for the Applicant in
BA/1043/2020.

Mr. Prasanna Bhangale, Advocate i/b. Sachin H. Deokar, for
the Applicants in BA/1049/2020.

Smt. A.A. Takalkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JUNE, 2021
[Through Video Conferencing]

P.C. :

1. In both these applications, a common order is passed because they arise out of the same investigation and same registered offence. For the sake of convenience, all the applicants are referred to by their names. The applicants are

seeking their release on bail in connection with C.R.No. 326/2019 registered at Gadhinglaj police station, District Kolhapur on 26.12.2019 under Sections 376-D, 376(2)(j)(n), 506 read with 34 of the Indian Penal Code. The Applicants were arrested on 29.12.2019 and since then they are in custody. The investigation is over and the charge-sheet is filed.

2. Heard Shri Sachin Deokar, learned Counsel for the Applicant in B.A.No.1043/2020, Shri Prasanna Bhangale, learned Counsel for the Applicants in BA/1049/2020 and Smt. A.A. Takalkar, learned APP for the State.

3. The prosecution case is reflected in the FIR lodged by the prosecutrix herself on 26.12.2019. She has stated that she was a married lady residing with her husband, mother-in-law and three daughters. The applicant – Babaji was residing in the neighbouring area with his family and both the families were on visiting terms. The other applicants Ganesh and Shashikant used to visit the house with applicant - Babaji. In April, 2018, the informant was not well and she sought advice

from the applicant Babaji. He, in turn, told her that she would have to go to a priest at Bhadgaon and the applicants Ganesh and Shashikant would take her to that place. Accordingly she accompanied other two applicants to Bhadgaon. The priest there gave her water to drink. She felt that the taste was little bitter. After some time she felt giddiness. She was traveling back with applicants Ganesh and Shashikant. It is her contention that she became unconscious and when she regained her consciousness she found herself in a room on first floor of a house in one village. She realized that both the applicants i.e. Ganesh and Shashikant had committed rape on her. It is her case that the applicant Ganesh threatened her with knife. All of them then sat in a car and drove away from that place. At about 4:30 p.m., both these applicants showed her a video clip about the incident when both these applicants had committed rape on her. She was told by the accused that this incident was a result of a bet between the applicant Babaji and applicant Ganesh. It is her case that thereafter the applicant Ganesh again threatened her that he would show

her video to the family members. Therefore, she accompanied him to Hasurwadi and again there the applicant Ganesh committed rape on her. It is alleged in the complaint that the accused Ganesh gave her mobile handset and told her to keep in touch through that mobile. It is her case that on one occasion the applicant Babaji also committed rape on her by threatening her that since he was aware of the incident he could use that information. On these allegations, the FIR is lodged.

4. Both learned counsel for the applicants submitted that it was a consensual relationship between applicant Ganesh and the informant. There are statements of villagers of Hasurwadi which show that the applicant Ganesh and the informant were in a relationship and they used to frequently stay at a house in Hasurwadi. There was no force involved. They submitted that only after her family came to know about the incident, this false FIR was lodged. Both of them relied on the photographs attached to these applications showing the close relationship between the first informant and the

applicant Ganesh.

5. Learned APP opposed these applications. She submitted that it was not a consensual relationship and the informant was forced to keep relations with the applicant Ganesh because of the first instance of rape which was recorded on a mobile clipping.

6. I have considered all these submissions and with the assistance of learned Counsel for the parties I have perused the charge-sheet. The photographs attached to these applications speak for themselves. Not only the informant and the applicant Ganesh but the photographs also have daughter of the informant in them as submitted by learned counsel for the applicants. These photographs do not appear to be taken under some coercion. However, that would still be left open to be decided during trial. But prima facie sufficient doubt is created against the prosecution case because of these photographs. These photographs are not part of the charge-sheet. However, there are other indications in the charge-sheet that the defence of the applicants could be true.

7. The statements of the villagers of village Hasurwadi are recorded. Villager Shrikant Jadhav has stated that the applicant Ganesh used to bring one girl to their village frequently.

8. In this context, the statement of one Anubai Bamane is very important. She has stated that the applicant Ganesh was residing in the house of Lokhande on rent. She was aware that he had brought a girl on 7 to 8 occasions to that house. That girl was introduced as his cousin. Every time that girl used to have conversation with this witness Anubai. At that time, Anubai was told that the name of that girl. On 28.12.2019 when her statement was recorded the investigating officer had brought that girl with them. At that time she was identified by this witness.

9. All these statements show that the applicant Ganesh and the informant were in a relationship and the informant used to frequently accompany Ganesh to that house. The photographs also state same story.

10. There is a statement of one Sandeep Bamane, who

was up-sarpanch of village Hasurwadi. He has stated that the applicant Ganesh used to bring a girl to that village frequently and there used to be discussion amongst the villagers about it. The applicant Ganesh had enquired with this witness about a possible admission of two small girls in a school at Hasurwadi.

11. Learned counsel for the applicants submitted that the applicant Ganesh wanted to make enquiries so that these girls could get admission in a school at Hasurwadi. These girls were of the informant herself. This also shows that the applicant Ganesh and the informant were in a relationship and only after it was made known to her family, this FIR was lodged on false allegations. Thus, sufficient doubt is created against the case of prosecution. However, nothing further can be observed at this stage. All these observations made in this order are restricted to passing of order in these bail applications. The trial Court shall not be influenced by any of the observations made in this order. The applicants have made out a sufficient case for being released on bail during trial. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 326/2019 registered with Gadhinglaj police station, District Kolhapur, the Applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two sureties each in the like amount.
- (ii) Both Application stand disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)