

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

ANTICIPATORY BAIL APPLICATION NO. 1158 OF 2020

Bandu Anna Dabhade Applicant

Versus
The State of Maharashtra Respondent

Mr. Kuldeep Patil i/b Ranjeet Patil, for the applicant.
Smt. J.S. Lohokare, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE :17th FEBRUARY 2021

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No. I- 282 of 2019 registered with Gokul Shirgaon Police Station, District Kolhapur on 04/12/2019 under sections 376 (2)(I) of the Indian Penal Code.

3. The FIR is lodged by the mother of the victim on 04/12/2019. She has stated that her daughter was 20 years of age. She was a special person. On 3/12/2019, her husband had left for

his work. The informant herself had left her house for attending her job in the canteen. At about 3.30 p.m., the informant came back. She saw that both the doors of her house were closed. She gave calls to her daughter. The daughter opened the back door of the house. Suddenly, a boy came out of the house from that door. He sat on his motor cycle and went away. The informant has described that boy as a slim person, having mild beard and was wearing a Yellow jacket and a cap. The informant asked her daughter about the incident. The daughter conveyed to the informant that she was raped by that boy. In the evening, the informant's husband came home and then on the next day, she lodged this FIR.

4. The applicant was arrested on 04/12/2019 itself and since then he is custody. Investigation is over and the charge-sheet is filed.

5. Heard Mr. Kuldeep Patil, learned Counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

6. Learned Counsel for the applicant submitted that the prosecution case depends on the identity of the offender. Though a test identification was held, the victim herself has not identified the applicant. The informant had identified the applicant in that test identification parade but that identification is meaningless because the applicant was shown to the informant at the Police Station after his arrest. He has relied on the statement of informant's husband to that effect. He, therefore, submitted that considering this aspect the applicant deserves to be released on bail as the identity is not established properly.

7. Learned APP relied on the statement of the victim recorded under section 164 of Cr.P.C. She also relied on the statement of the first informant and identification of the applicant at the test identification parade.

8. I have considered these submissions. The statement of the victim is recorded under section 164 of Cr.P.C. She had described the incident in detail. The applicant had committed rape on her. The statement was recorded on 07/12/2019. After the incident the mother of the victim had seen one person coming

out of the house from back door. Thus, at this stage, there is no reason to doubt occurrence of the incident. The question is about the identity of the culprit.

9. With the help of both learned Counsel, I have perused the charge-sheet. As discussed earlier, the victim has given her statement under section 164 of Cr.P.C. and mother has given her FIR immediately. There is a memorandum of test identification parade held on 17/12/2019. At the test identification parade, the victim had not identified the present applicant. The first informant had identified the present applicant. This has to be considered in the light of the statement given by the informant's husband. His supplementary statement was recorded on 5/12/2019. That statement mentions that he was aware that the police had immediately arrested the present applicant. This witness was told the name of the applicant. He has further stated that the informant and the victim had identified the applicant. The statement of the husband of the informant was recorded on 5/12/2019. The identification parade was held on 17/12/2019. That means police had shown the applicant to the victim and the

informant before the test identification parade.

10. In this case, the identity of the offender was the most crucial piece of evidence. The investigating agency by their own conduct have vitiated and destroyed the important piece of evidence. In this background, since identity of the culprit is doubtful and since sufficient doubt is raised about participation of the present applicant in the offence, the applicant is entitled to be released on bail.

11. Hence the following order.

ORDER

- (i) In connection with C.R. No.I-282 of 2019, registered with Gokul Shirgaon Police Station, Kolhapur, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)