

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.446 OF 2021

(Dhanraj s/o Tanba Neware Vs. State of Maharashtra thr. PSO PS Bhivapur, Dist.
Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Ritesh Kalra, Advocate for Applicant.
Mr. N.R. Rode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 30th AUGUST, 2021.

The applicant is seeking bail in connection with Crime 245/2020 registered with Police Station Bhivapur under sections 376 (2)(n) and 506 of the Indian Penal Code.

2. The case of the prosecution, in a nutshell, is that the applicant sexually exploited the victim taking undue advantage of her intellectual disability, the victim conceived and a child is born. The DNA profiling test has confirmed that the applicant is the father of the child.

3. The submission is that the delayed report is subjective of consensual sexual relationship. It is argued that the report is lodged after six months of the alleged forcible sexual intercourse which occurred in January, 2020. The other submission is that the material on record is not

sufficient to even *prima facie* conclude that the victim is suffering from intellectual disability, and therefore, the case of the prosecution that the alleged consent is vitiated, is untenable.

4. With the assistance of the learned counsel Mr. Kalra, who appears on behalf of the applicant, and the learned APP Mr. Rode, I have scrutinized the material available in the charge-sheet. It is irrefutable that the victim is suffering from some disability. The medical papers make a reference to the examination by, and diagnosis of, the psychiatrist which refer to mild intellectual disability. The statement of the victim is recorded under section 164 of the Criminal Procedure Code, 1973. Notably, a trained teacher acquainted with the language and gestures of the intellectually challenged, was required to be appointed to bring on record the version of the victim. It is true, as is pointed out by Mr. Kalra, that the report purports to be lodged by the victim and it is not clear whether it is the victim who narrated her version or whether it was some other person who spoke on behalf of the victim. However, in view of the other over whelming material on record, I am not in a position to *prima facie* accept the submission, that the report is indicative of the normal intellectual ability of the victim. All these aspects, would have to be left to the trial court, after the evidence is adduced.

5. At this stage, it is not possible to accept the defence theory of consensual sexual relationship, particularly in view of the provisions of section 114-A of the Indian Evidence Act, 1872 which are introduced by the 2013 amendment. The said provision mandates that where sexual intercourse is proved, and the question is whether it was without the consent of the woman alleged to have been raped, and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

6. In view of the presumption which is mandatorily required to be drawn, if the statement of the victim translates into evidence, the absence of consent shall have to be presumed.

7. No case is made out for grant of bail.

8. However, the trial will have to be expedited.

9. The trial court shall frame the charge, if not already framed, within the next thirty days, and shall conclude the trial within the next eight months.

10. Needless to record, any observation made herein is strictly a *prima facie* view taken for the purpose of deciding the entitlement to bail, and shall not prejudice the accused in the trial.

11. The registry shall bring this order to the notice of the trial Court, within the next seven days.

12. The application is dismissed.

JUDGE

NSN