

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

CRIMINAL APPLICATION (ABA) NO. 360 OF 2021

Vishnukant s/o Tukaram Gutte

..vs..

State of Maharashtra, thr. P.S.O.

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

Court's or Judge's orders

Shri A.M. Jaltare, Advocate for Applicant.
Shri M.J. Khan, A.P.P. for Respondent/Stae.
Shri Kamal Anandani, Advocate for Assist to prosecution.

CORAM : VINAY JOSHI, J.

DATED : 07/07/2021

Hearing was conducted through Video Conferencing.

2. Registration of Crime No.994 of 2021 with the Police of Washim Police Station for the offence punishable under Sections 376 and 506 of the Indian Penal Code led the applicant to conceive reasonable apprehension of arrest in said crime. In anticipation of arrest, the applicant has applied for grant of pre-arrest bail to the Court of Sessions, but remained unsuccessful. It is strenuously argued that this is a case of false implication and at the most, a case of consensual and voluntary relationship in between them. The State resisted bail by filing affidavit-in-reply contending the prosecution story in brief. Learned Counsel for the informant also resisted to grant pre-arrest protection.

3. The informant lady was serving as a Police Constable whilst the applicant was serving as a Police Sub Inspector. In the year 2006, both were posted at Washim Police Station by which they got acquainted. It is the informant's case that on 30.05.2021, while she was at her residential quarter, the applicant came there. Since they were well acquainted with each other, informant asked the applicant to have a seat and offered for Tea. The applicant by noticing that she was alone, had dragged her into the Bedroom and had forcible sexual intercourse. She tried to resist, but in vain. She has also raised alarm, however, the applicant slapped her to make her quite. After the incident, the informant's husband returned to the house on which she narrated the entire episode. Since the applicant was higher Police Officer and the informant was under mental trauma, she waited for some days and lodged the report.

4. Undisputedly, the informant was a married lady aged 39 years having kids. She was serving as a Police Constable and the alleged incident took place in the official police quarters. It is strenuously argued that the entire story as has been narrated by the informant, is totally improbable. The Medical evidence nowhere suggests the mark of struggle or injury which falsifies the informant's case of struggle. According to the applicant, if there had been forcible

sexual assault, then in police line neighboring persons would have heard the commotion.

5. It is submitted that, the applicant had lost his wife and was staying with his daughter at distant place. There was old acquaintance and intimacy in between the applicant and the informant for years together. It is applicant's case that due to discord in between them, she has filed false report to pressurize the applicant.

6. The applicant has produced photo copies of printouts of electronic money transfer receipts to show that over the period of time, the applicant had periodically sent money to the informant lady. This exercise was done to show that there was something more in between them than the casual acquaintance. According to the applicant, the informant lady has suppressed their relationship. Though she stated that they got acquainted in the year 2006 by skipping long standing relationship abruptly made allegations of rape in the year 2021 due to misunderstanding. The several electronic payment receipts *prima facie*, supports the applicant's contentions that the story is otherwise than what is tried to be projected by the informant lady. In other words, it supports the applicant's stand that they had intimate relations for considerable time.

7. Learned Counsel for the applicant has submitted that on the following day of the lodgment of the report, the informant lady has telephoned to the daughter of the applicant and talked about their relationship. He has produced a transcription of the conversation which took place in between them. *Prima facie*, said conversation indicates that the informant was well acquainted with the applicant's entire family and on the following day of the lodgment of the First Information Report, she called to the daughter of the applicant. Said material goes against the story of forcible sexual intercourse, as alleged. In normal course, after experiencing horrifying sexual abuse, no one would call to the daughter of rapist. On the other hand informant's casual talk on next day creates conceivable doubt regarding alleged act. Besides that, the applicant has produced transcription of call recording in between the applicant and the informant. Bare perusal indicates that they were in relationship since long. The said material prominently supports to the case of consensual relationship. Though learned A.P.P. objected to rely on these documents, but on *prima facie* basis, it can be considered.

8. Having regard to these peculiar facts, this Court has granted interim protection to the applicant vide order dated 30.06.2021. After obtaining interim protection, the applicant had attended the Police

Station. It is submitted that, the applicant was medically examined, gave samples as well as his under garments were seized. In view of that, nothing remained to be investigated by taking custody of the applicant. The statute has conferred discretionary power with the Courts to make it meaningful. On case to case basis, judicial discretion has to be used to protect from deprivation of personal liberty in just cases. There is reasonable possibility of filing report for some ulterior motive or with the object of humiliating or for settling personal score. This is a case of kind where the Courts shall step into for protecting personal liberty of individual which is connected with Article 21 of the Constitution of India.

9. It needs to be noted that the applicant is a married lady aged 39 years not an ordinary rustic village lady but a Police Constable for more than 15 years. Moreover, there was a delay of four days in lodgment of report. The medical evidence does not support the allegation of forcible sexual intercourse. The major part of investigation seems to be over. In the circumstance, custodial interrogation is not at all warranted. The applicant being in police service, there is no likelihood of fleeing from justice nor chances of abscondance. The purpose would be served, if the applicant is directed to co-operate with the investigating agency. Having regard to all above facts, the applicant has made out a case for grant of pre-

arrest bail to protect his right of liberty. Needless to say that, the above observations are *prima facie*, in nature and shall not have any impact on the trial of this case. In view of that following order is passed :

- (a) Ad-interim order dated 30.06.2021 is hereby made absolute with further direction to attend concerned Police Station on every Sunday between 10.00 am to 02.00 pm till filing of charge-sheet.
- (b) The Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

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