

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

CRIMINAL APPLICATION (BA) NO.918 OF 2021

(Rambhau s/o Shriram Dongre (In Jail) Vs. State of Maharashtra thr. PSO PS Ural,
Tq. Balapur, Dist. Akola)

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

Court's or Judge's orders.

Mr. A. S. Londhe, Advocate for Applicant.
Mrs. K. R. Deshpande, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 15th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 8/2021 registered with Police Station Ural, Tq. Balapur, Dist. Akola for offences punishable under sections 376 (2)(I), 376 (2)(n) read with section 34 of the Indian Penal Code.

2. Mr. Nagesh Bhagat lodged report dated 09.01.2021 with Police Station Ural stating that his sister 'S', who is aged 33 years, married one Mr. 'S. H.', and within six months of the marriage she developed some mental ailment, probably due the trauma suffered on account of the death of her mother. She was deserted by her matrimonial family. The father of the informant consulted Dr. Kelkar who did treat 'S', but in vain. The informant states that on 06.01.2021 his wife suspected that 'S' was pregnant. The pregnancy test was conducted and the result was

positive. 'S' revealed that 7 to 8 months earlier co-accused Nilesh Kharap met her at 03:30 p.m., took her to the canal, and subjected her to forcible sexual intercourse and then took her to a cotton-gin and left on the pretext of returning with motor-cycle. The first informant then states that his sister further disclosed that one person aged 52 to 55 claimed to be the watchman and he too subjected the victim to forcible sexual intercourse. It is stated in the report, that the informant Nagesh Bhagat recollected that it was he who picked up the victim sometime in April or May 2020 and he met a person near the cotton-gin who claimed to be the watchman and disclosed his name as Rambhau Dongre.

3. Victim 'S' delivered a female child. The investigating agency conducted the DNA profiling of victim 'S', the applicant, co-accused Nilesh and the child. The DNA profiling confirms the victim 'S' to be the mother of the child. However, the applicant and co-accused Nilesh are excluded to be the biological father of the baby.

4. The learned Sessions Judge has penned an elaborate order while rejecting bail. It is noted that the offence is heinous, and the fact that the victim is 50% intellectually challenged only aggravates the offence. The learned Sessions Judge is right in observing that the accusation is heinous. However, the nature of the accusation will have to be considered, along with the material on record, to ascertain whether there is a case

made out for grant of bail.

5. The incriminating material pressed in service by the prosecution, is that the victim disclosed that after she was raped by the co-accused, and while she was waiting at the cotton-gin, one person who claimed to be the watchman also raped her. There is no identification done and it is possible that the test identification (TI) is not done in view of the intellectual disability. Be that as it may, the only incriminating material appears to be that the brother of the victim re-collected that 7 to 8 months ago when he picked up the victim one person claiming to be the watchman disclosed his name as Rambhau Dongre, who is the present applicant. Pertinently, while there may be some justification for not involving the intellectually challenged woman in the test identification process, no attempt is made to identify the applicant with the assistance of the brother of the victim who recollected from memory to have met a person who disclosed his name as Rambhau Dongre.

6. Considering the material on record, a case for grant of bail is made out.

7. The application is allowed.

8. The applicant be released on furnishing PR bond of Rs.16,000/- (Rupees Sixteen Thousand) with solvent surety of like amount on the following conditions.

- (a) The applicant shall not tamper with the evidence or make any attempt to influence the witnesses, directly or indirectly.
- (b) The applicant shall not indulge in any criminal activity while on bail.
- (c) The applicant shall not leave the country without the permission of the jurisdictional Court.

JUDGE

NSN