

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

Criminal Application (BA) No. 1012 of 2021

[Shankar S/o Pundalik Hande ..vs.. State of Maharashtra, through P.S.O., P.S., Shegaon City,
Dist. Buldana]

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 the applicant
Mr. N. S. Rao, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 06-10-2021

Heard.

2. The applicant, who is in custody since 25/5/2019 in connection with Crime 243/2019 registered with Police Station, Shegaon City, District Buldana for offences punishable under Section 376(2)(n), 376(d), 377, 324, 323 and 506 read with Section 34 of Indian Penal Code, is seeking regular bail. The charge-sheet is filed on 21-8-2019. However, presumably due to the pandemic, there does not appear to be any significant progress in the trial.

3. The prosecutrix lodged report with Police Station Shegaon City on 25-5-2019. She alleged that she came to visit Gajanan Maharaj Temple along with her ten years old son Gopal on 21/5/2019. On 24/5/2019 at 7.00 p.m. she and her son had dinner and were sitting in the premises of the temple. At 11.30 p.m., one person who disclosed his name as Shankar Hande approached her and offered to treat her with Juice. The son was asleep and the prosecutrix accompanied Shankar Hande to have Juice. Shankar Hande took her to the Railway bridge behind the temple. An auto rickshaw was parked there and two persons standing near the auto took the prosecutrix to an agricultural field near the Railway bridge. She was forcibly dis-robed and when she resisted, she was assaulted by belt and fists. Her clothes were removed and the two persons who were standing near the auto subjected her to oral sex. The two persons then subjected her to forcible sexual intercourse one after the other. Shankar Hande

followed them and subjected her to oral sex and forcible sexual intercourse.

4. I have perused the material on record. While an elaborate and minute examination of the material may not be appropriate at this stage, brief reasons would have to be indicated for the order which I propose to pass.

5. Indubitably, there is medical evidence of physical assault as alleged, and the prosecutrix has suffered injuries all over the person. The injuries are consistent with her allegation that she was assaulted with belt, slaps and fists. However, there is no medical evidence to suggest that she was subjected to forcible sexual intercourse. It is true, as submitted by Mr. Rao, the learned APP, considering that the complainant is a married woman and that she was helpless, the absence of injuries on the private parts is not decisive. However, considering the violent

manner in which the rape has allegedly occurred, some tell tale signs are expected to be there on the private parts. This, of course, is a *prima facie* observation made for the limited purpose of deciding this application. While the allegation is extremely grave, it is not even the case of the prosecution that the applicant is otherwise a flight risk. It is not the case of the prosecution that the applicant had criminal antecedents. There is no material from which it can be inferred that the applicant shall tamper with the evidence or shall influence the complainant or any other witnesses. The trial is not likely to conclude in near future and indeed it would be unrealistic to hope that the trial would come to its logical end soon.

6. The two co-accused are released on bail by this Court. While there is some additional role attributed to the applicant Shankar Hande, that is, he approached the victim and induced her to accompany

him on the pretext of giving her Juice, in so far as the alleged sexual assault is concerned, there is hardly any difference between the roles attributed to the co-accused who are granted bail and that attribute to the applicant.

7. Considering that the applicant is in custody since 25/5/2019 and that although the chargesheet is filed on 21/8/2019, there is apparently no significant progress in the trial and the attending circumstances noted supra, I am inclined to grant bail.

8. The application is allowed.

9. The applicant shall be released on bail subject to the following conditions.

(i) The applicant be released on bail on furnishing PR Bond of Rs. 50,000/- (Rupees Fifty Thousand) with a surety of like amount.

- (ii) The applicant shall not make any attempt to influence the witnesses or tamper with the evidence.
- (iii) The applicant shall not enter the territorial limits of Shegaon Tahsil unless permitted by the trial court.
- (iv) The applicant shall not indulge in any serious or similar type of offence.
- (v) The applicant shall attend the dates of hearing regularly.

JUDGE

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