

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 BAIL APPLICATION NO.52 OF 2022

1. GANESH DNYANESH KAKDE
2. SHUBHAM KAKASAHEB JOGDAND
3. AVINASH KAKASAHEB JOGDAND

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. More P. P.
APP for Respondents/State : Mr. A.V. Deshmukh
Advocate for R/2 : Mrs. Sonawane Sunita G.

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CORAM : M.G. SEWLIKAR, J.
DATE : 10th February, 2022

PC:-

This is an application under Section 439 of the Cr.P.C. by the applicants.

2. Informant was 17 years of age on the date of the incident. She is a resident of Mumbai.

3. Informant is in love with applicant no.3. Applicant no.2 is the husband of sister of the informant and applicant no.1 is the maternal uncle of the applicant no.2. Applicant no.3 is the brother of applicant no.2.

4. Informant had made a call to applicant no.3 in the last week of

August-2021. Applicant no.3 had assured her to get a job for her at Jalna and would also make her arrangement for stay in a tenanted room. Therefore, informant and her friend (to conceal her identity, she is referred as 'X') came to Jalna on 3rd November, 2021 at 2.30 pm . Her friend 'X' got a job in a cloth shop. Informant also got a job in a shop. On 16th November, 2021, applicant nos.1 and 2 met the informant and 'X', they took them to a highway near Jalna. They administered liquor to the informant and 'X'. Thereafter, they did not know what happened with them.

5. On 21st November, 2021 applicant no.1 took the informant to a secluded place and had penetrative sexual assault with her in the car itself. She told this incident to applicant no.2 and he also tried to touch her inappropriately. On the same day applicant no.1 had taken 'X' and had tried to molest her. Both informant and 'X' ran away from that place and went to Jalna. On 30th September, 2021 at 10.30 pm applicant no.3 came to take her. She was at the room of one Deepak. Deepak had penetrative sexual assault with her. On 1st October, 2021 informant had gone to bring 'X' at Cidco Bus Stand, Aurangabad but 'X' did not meet her, therefore, she left for Jalna. She realised on reaching Jalna that 'X' had arrived at the room at Jalna. Applicant no.3 came there and assaulted the informant and asked her to leave. Thereafter, FIR came to be lodged.

6. Heard learned counsel Shri More for the applicant, learned APP Shri Deshmukh for the State and Smt. Sonawane learned counsel for the informant.

7. Learned counsel Shri More submits that in the statement recorded under Section 164 of the Cr.P.C. both the informant and 'X' did not support the prosecution's case. Both of them refused to get themselves examined medically. He further submits that medical report shows that 'X' was pregnant of five weeks on 8th October, 2021 and the incident took place on 19th October, 2021. He submits that from the medical evidence it is clear that 'X' was pregnant much earlier than she visited the applicants.

8. Learned APP submits that DNA sample has been taken and it is referred to the Chemical Analyser for analysis. He submits that till the receipt of DNA report any of the applicants may not be released on bail.

9. Charge-sheet is filed. On perusal of the charge-sheet it is seen that the informant and 'X' had refused to get them medically examined. It appears that later on she consented for medical examination. On conducting the medical examination, the Medical Officer found that 'X' was pregnant of five weeks on 8th October, 2021. As per the allegations in the FIR for the first time applicants, the informant and 'X' met each other on 19th September,

2021. If the period of pregnancy is calculated it dates back to 15 days before 19th September, 2021. Therefore, I find force in the statement of learned counsel Shri More that 'X' met the applicants when she was already pregnant. In addition to this, statement of informant and 'X' have been recorded under Section 164 of the Cr.P.C. before the learned Magistrate. Both of them stated that they did not know anything. In the statement under Section 164 of the Cr.P.C., informant has stated that she wants to withdraw the case. She does not want to say anything. 'X' has stated in her statement under Section 164 of the Cr.P.C. that FIR was lodged as applicant no.3 refused to marry the informant. She has further stated that her family members do not permit her to take further education. This shows that both the informant and 'X' refused to give any statement under Section 164 of the Cr.P.C. relating to the incident. In the FIR it is stated that informant is in love with applicant no.3. Having regard to the nature of evidence collected by the prosecution, I am inclined to release the applicants on bail by putting some stringent conditions. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Each of the applicants be released on PR bond of Rs.50,000/- with one solvent surety in the like amount each, in connection with Crime No.484/2021 under Section 376, 376-D, 376-(D) (A), 323, 506 of the I.P.C. and under Section 3, 4, 5(g), 6, 7, 8, 9(g),

10, 18 of the POCSO Act and under Section 3(2)(v), 3(1)(w)(i) (ii) of the SC/ST Act and under Section 66(E) of the Information Technology Act with Kadim Jalna Police Station, District Jalna on condition that they shall not tamper the prosecution evidence and shall not contact either the informant or 'X' or any of their family members till the conclusion of the trial.

- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]