

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

934 BAIL APPLICATION NO.76 OF 2022

**PRAKASH SHESHRAO RATHOD
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondents/State : Mrs. R.P. Gour
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 2nd February, 2022**

PC.:-

Heard.

2. Informant is a widow. It is alleged that on 23rd June, 2021 the informant had gone for easing. Her parents in laws were not at home. When she was on her way back, the applicant came from behind, embraced her, gagged her mouth and pushed her towards the canal and by lifting her saree committed rape on her. When she was about to scream, applicant brandished a knife and threatened that he would kill her children. Therefore, she did not lodge the report immediately. She went to her parents and they advised her to disclose this incident to her parents in law. On 27th June, 2021 her parents in law came back and then she narrated the incident to them. On these allegations FIR came to be lodged under Section 376, 506 of the I.P.C. vide

Crime No. 146/2021 registered with Sonpeth Police Station, District Parbhani.

3. Learned counsel Shri Salunke submits that tenor of the FIR denotes that the alleged sexual intercourse was a consensual one. He has alleged in the application that informant herself wanted the applicant to keep the relations with her. She always called the applicant on his mobile from mobile of her husband. He submits that he is not in a position to produce CDRs because those are available only to the prosecution agencies. He submits that viewed on this background it is clear that the alleged sexual intercourse was consensual.

4. Smt. Gour learned APP submits that the informant has made the same allegations against the applicant in her statement under Section 164 of the Cr.P.C. She further submits that brother of the informant has given statement to the effect that the informant was upset when she was coming back on the day of the incident from the place of easing. She submits that having regard to the circumstances in which offence has taken place, application may not be allowed.

5. Charge-sheet is filed. There is delay of five days in lodging the FIR. Learned APP submits that the delay is well explained because she had gone to parents place on 26th June, 2021 and after arrival of her parents in

law she lodged the report. The informant was referred for medical examination. However, the Medical Officer has not given any opinion as to whether there was sexual assault on the informant or not. Having regard to the delay in lodging the report and the absence of medical evidence, I am inclined to release the applicant on bail. He has no criminal antecedents. He is not likely to flee from justice. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.146/2021 under Section 376, 506 of the I.P.C. with Sonpeth Police Station, District Parbhani on condition that he shall not enter in village Chukar Pimpri Tanda, Tq. Sonpeth 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.]