

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

ANTICIPATORY BAIL APPLICATION NO.176 OF 2022

ASHOK VIJAY RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. P.P. More, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent No.1

Miss. Lata P. Bamane, Advocate for the respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 26th FEBRUARY, 2022

PRONOUNCED ON : 05th APRIL, 2022

ORDER :

1 Applicant is apprehending his arrest in connection with Crime No.1/2022 dated 01.01.2022 registered with Chandanzira Police Station, Dist. Jalna, for the offence punishable under Section 376, 363, 366-A, 354, 354-A, 354-D read with Section 34 of the Indian Penal Code, 1860, under Section 4, 6, 8, 12, 16 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mr. P.P. More for the applicant, learned APP Mr. A.M. Phule for the respondent No.1 and learned Advocate Miss. Lata P. Bamane for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that it has been falsely lodged against the present applicant. His name is not appearing in the First Information Report but it has been tried to be stated that he is friend of accused No.1 Sachin Vishnu Rathod. If the contents of the First Information Report are seen, then, no role is attributed to the applicant except that he was accompanying Sachin, however, it appears that later on the victim has changed her statement and she has stated that even the present applicant has committed rape on her. The entire story appears to be concocted. The incident has taken place in the intervening night of 31.12.2021 and 01.01.2022 i.e. all of them were celebrating new year and it is hard to believe that then such incident would have taken place. The provisions of the Atrocities Act will not be attracted, as there are no allegations or attributions regarding abuses on the basis of caste of the informant. The contents of the First Information Report as it is as well as the supplementary statement would show that the informant had ample opportunity to flee away from the alleged clutches of the accused persons, but she has not done the said act.

When the informant has changed her story in her supplementary statement, she is not believable. Custodial interrogation of the applicant is not required and, therefore, the applicant be released on anticipatory bail.

4 Per contra, the learned APP has strongly opposed the application and submitted that though in the First Information Report the allegations of rape are not against the present applicant; yet, in the supplementary statement she has disclosed the same and she has also given the reason as to why she has not disclosed that fact in the First Information Report. No advantage is given to the applicant at this stage about the alleged discrepancy. Statement of the victim has also been recorded under Section 164 of the Code of Criminal Procedure. Taking into consideration the allegations he does not deserve the extraordinary relief.

5 The learned Advocate appearing for the respondent No.2-informant has reiterated the contents of First Information Report and submitted that the contents of the First Information Report would definitely show that the informant was forcibly taken away from the spot by applicant as well as co-accused Sachin. The girl was aged 15. They are from the same village and, therefore, they had the knowledge that she is the member of scheduled caste. As regards the applicant is concerned, she has later on

explained as to why she has not told the fact against the present applicant earlier. In her statement under Section 164 of the Code of Criminal Procedure also she has stated that the present applicant had committed rape on her. Therefore, the applicant does not deserve bail.

6 Perusal of the First Information Report and the police papers would definitely show that the informant is a 15 years old girl. She has mentioned that when she had gone outside the house for answering nature's call and was standing by the side of the road. Both the accused persons went on motorcycle and accused Sachin started saying that as to why she is not talking with him. He wanted to talk with her and then though she was resisting with the help of present applicant, it is stated that she was taken on two wheeler to Bawane Pangri. On the basis of the First Information Report as it is, it appears that offence under Section 363, 354, 354-A, 354-D read with Section 34 of the Indian Penal Code, under Section 8, 12 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered. It appears that her further statement was also recorded in presence of five persons on 03.01.2022, wherein also she had mentioned the same thing about kidnapping, however, it was just stated that accused Sachin had pressed her

breast before she was taken on the two wheeler. In her statement under Section 164 of the Code of Criminal Procedure, she has stated that she was kidnapped by the applicant and Sachin and there was a party of 31st December in a field. Many people had gathered there. She gave a phone call to her father by taking mobile of a person there and informed that she is at that place. However, thereafter the present applicant and co-accused Sachin took her at different place. And thereafter they both had forcible sexual intercourse with her. They left her at Bawane Pangri and went. She states that as she was frightened, she has not stated about the rape earlier. We will have to consider the other statements also which have been recorded uptill now. The statements of other witnesses would show that they were present and celebrating the new year and at that time at that place accused Sachin as well as present applicant were present. Even the person in whose field the party was going on states that these two persons as well as the informant was present. Even if for the sake of arguments it is accepted that the informant had an opportunity to disclose to those persons that she has been kidnapped; yet, the fact remains is that she is a minor and her consent for anything cannot be considered at all, under the eyes of law. Definitely, investigation is required and, therefore, this cannot be considered as a fit case where the discretion of this Court should be exercised. On that count also this Court does not want to go into the aspect, as to whether the application is barred

under Section 18 of the Atrocities Act. Since the Court is not inclined to grant the relief, application stands rejected.

(Smt. Vibha Kankanwadi, J.)

agd