

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

**7 ANTICIPATORY BAIL APPLICATION NO.293 OF 2022
WITH APPLN/1132/2022 IN ABA/293/2022**

**VALJNATH GUNDIBA TIDKE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

Mr.B.R. Kedar, Advocate for the applicants.
Mr.B.V. Virdhe, APP for the respondent/State.
Mr.PD. Bachate, Advocate for assist to APP

CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 18.04.2022

PC :-

01. The applicants are apprehending their arrest in connection with Crime No.18 of 2022 registered at Dharur Police Station, Dist. Beed, for the offences punishable under sections 363, 376, 342, 323, 504, 506 read with section 34 of the Indian Penal Code (IPC). The applicants are accused Nos.2,3 and 4.

02. Heard Mr. B.R. Kedar, learned Advocate for the applicants and Mr.B.V. Virdhe, learned APP for the respondent/State. In order to cut-short, it can be stated that both of them have made submissions to support their respective contentions.

03. Perusal of the FIR would show that the prosecutrix is aged 20 years. It is then stated that the marriage proposal of accused No.1, who is son of accused Nos.2 and 4, was forwarded for the prosecutrix about two years prior to the FIR. However, her parents had refused on the count that she is still taking education. However, according to her accused No.1 used to beat and insist her that she should marry him and he will not allow her to marry somebody else. It appears that she had not disclosed this fact to her family members.

04. The prosecutrix further states that in July, 2021, she had gone to her maternal uncle's place and on one day accused No.1 had called him when she was passing through road in front of his house and at that time accused Nos.2,3 and 4 were present. They started asking as to why she is not marrying with accused No.1. It is then stated that she was dragged inside the house and accused No.1 had raped her. It is highly impossible that the parents would allow their son to rape a girl and would be a part of the crime when they had knowledge that the girl is not ready to marry with their son. The prosecutrix further states that after the act, when she was going towards

her uncle's house, at that the accused threatened to kill her as well as her brother. Then she states that she did not inform it to anybody. This reaction is also highly improbable that even after such kind of incident with her she will not disclose the act to her relatives.

05. The prosecutrix further states that thereafter incident had directly happened on 28.01.2022, when again she had gone to the village of her maternal uncle for attending Yatra of Goddess. According to her, when she was with her cousin sister, accused No.1 threatened her that if she does not accompany him, it would be having serious consequences and after giving such kind of threat, he went away. If there was such threat to her, then the reaction which accused wanted could have happened, itself is a question.

06. The prosecutrix then states that on immediate next day i.e. 31.01.2022, her younger brother and cousin brother were in front of one medical shop, where they were stopped by accused No.1. They were assaulted and when her brother told the said incident, then the informant told about the incident of rape, which had taken place about six months' ago. Even at this stage it can be said that there is less possibility of such incident

that when the brother was assaulted by fist and slap, he would told incident to the family members and prosecutrix on whom rape was committed, will not tell the incident to family members. Further the prosecutrix says that after she had told about the incident to the family members, then she herself, maternal uncle, brother and cousin brother as well as aunt went to the house of accused No.1 to ask him about the incident and then at that time accused No.1 and accused No.4 had abused them. Accused No.1 came with scythe and gave threat to kill. It appears that the real incident is different and colour has been given in different way.

07. The police papers show that the statement of the informant-prosecutrix has been recorded which is nothing but replica of her FIR. The spot panchanamas have been prepared, however, it can be seen that it is after a period of 6-8 months. The medical examination of the informant shows "old healed torn hymen at 2',4',7' and 8' clock position". The entire report does not say any fresh signs of intercourse and therefore whether said medical report would support what had happened 7 months ago is a question. The statements of witnesses have been taken and it is almost hearsay as regards alleged offence of rape is concerned. At the most there appears to be some

statements involving offences under sections 323, 506 read with section 34 of the IPC, which are bailable sections. Accused No.1 is not before this Court and therefore interim protection granted by this Court on 15.03.2022 deserves to be confirmed and accordingly it is confirmed.

08. The application for assist to learned APP stands allowed.

[SMT. VIBHA KANKANWADI, J.]