

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

914 BAIL APPLICATION NO.751 OF 2021

Pandurang Ankush Khore ...Applicant

Versus.

The State of Maharashtra ... Respondent.

WITH
CRIMINAL APPLICATION NO. 1538/2021 IN BA/751/2021

Parvatibai Pralhad Gavhane ...Applicant

Versus

1. The State of Maharashtra
2. Pandurang Ankush Khore ...Respondents

...
Advocate for the Applicant : Mr. R. S. Deshmukh, Sr. Counsel i/b.
Mr. D. R. Deshmukh

APP for the Respondent : Mr. G. O. Wattamwar
Advocate for informant to assist APP : Mr. Shriraj R. Wakale

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CORAM : M. G. SEWLIKAR, J.

DATED : 25-01-2022

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.28/2021 under Sections 406, 452, 376, 504, 506 r/w Sec.34 of the Indian Penal Code 1860 registered with Belwandi Police Station, District Ahmednagar.

2. It is the case of the prosecution in brief that informant has

a daughter by the name of Ashwini. Even after marriage and after begetting a son in the year 2016, her daughter Ashwini has been staying with her. The informant was staying at Supa as her husband and her son were employed in a Company at Supa. Informant and her daughter had gone to Shrigonda Court on account of matrimonial matters. She got acquainted with accused / applicant and his son Ankush Khore. Applicant and his son Ankush Khore requested the informant to stay with the informant as police were on their trail. Both of them stayed with the informant for 15 days. Applicant suggested the informant that his son Ankush Khore would marry the daughter of the informant by the name of Ashwini. Applicant demanded some amount for meeting expenses of court cases. Therefore, informant paid him Rs. 3,15,000/- by encashing FDR on 04th June, 2018. Again on the request of the applicant she paid Rs. 4,00,000/- to the applicant. Again after six months applicant demanded money. Thereupon she gave her golden ornaments worth Rs. 1,60,000/- to the applicant. Applicant had assured her that he would deposit amount in any financial institution and would make ornaments for her daughter. Thereafter informant tried to contact the applicant but his mobile was switched off. Then she realized that applicant did not deposit the amount in the financial institution nor did he keep his promise of making ornaments for the daughter of the informant.

3. It is further alleged that on 17.01.2021 at 07.00 p.m. when no one was in the house and when religious programme called as Jagaran - Gondhal was going on, applicant came to her house at 08.00 p.m., at that time somebody knocked her door. Informant opened the door and found applicant. Applicant committed rape on her and threatened that he would kill her. While leaving, the nephew of the informant by the name of Pradip Gavhane saw the applicant. Thereafter, the informant narrated the incident to her husband and lodged report on 19.01.2021.

4. Heard learned counsel Shri Deshmukh for the applicant and Shri G.O. Wattamwar learned APP for the State and Shri Shriraj Wakale, learned counsel for the informant assisting APP.

5. Learned counsel Mr. Deshmukh submits that his story as narrated by the informant in FIR is not believable. He submits that the informant had paid Rs. 7,15,000/- and had given her golden ornaments to the applicant. However, except her barewards there is no evidence to that effect. He further submits that this Court on 09th September, 2021 had directed the learned APP to produce the medical examination report of the victim and statement of the victim under Section 164 of the Code of Criminal Procedure (Cr.P.C.). However, these two

documents are yet to be produced.

6. Learned APP submits that he still has not received copy of statement under Section 164 of Cr.P.C. He submits that he has received report of Medical Examination of the informant. He submits that Pradip has also corroborated the statement of the informant. He submits that there is a prima-facie case against the applicant.

7. Learned counsel Shri Wakale submitted that criminal cases are pending against the applicant. Therefore, he should not be released on bail.

8. So far as payment of Rs. 7,15,000/- is concerned, there is no record to show that informant had paid such hefty amount to the applicant. So also there is no evidence to show that informant had given ornaments worth Rs. 1,60,000/-. The learned APP was directed to produce copy of statement under Section 164 of Cr.P.C. The said statement is still not produced. No reason is forthcoming for not producing the statement of informant under Section 164 of Cr.P.C. It can be legitimately inferred that the said statement is not produced as it is not favour of the prosecution. Applicant is behind bars since last more than one year. So far as criminal antecedents are concerned, it can be considered only if there is a prima facie

case against the applicant. Since there is no prima facie case, criminal antecedents are not relevant. Charge-sheet is filed. Therefore, further detention of the applicant behind bars is not warranted. Applicant therefore, can be released on bail on putting stringent conditions. Hence the order :-

ORDER

- (i) Application is allowed.
- (ii) Applicant be released on bail on his furnishing PR bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in connection with Crime No. 28/2021 registered with Belwandi Police Station, District Ahmednagar under Sections 406, 452, 376, 504, 506 r/w Sec.34 of the Indian Penal Code 1860, on condition that he shall not enter village Ghutewadi Taluka Shrigonda and village Supa Taluka Parner till the conclusion of the trial.
- (iii) Criminal Application No. 1538/2021 is allowed and disposed of accordingly.
- (iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M.G.SEWLIKAR, J.]

shp/-