

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1489 OF 2021

Sachin @ Nana S/o Sharavan Dandage Applicant

Versus

The State of Maharashtra & another Respondents

Mr. V.Y. Bhide, Advocate for the applicant.
Mr. A.V. Deshmukh, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 28th JANUARY, 2022.

PER COURT :

1. Heard.

2. Victim is a mentally disabled person. Her mother is the informant. It is alleged that on 30th May, 2021, victim developed abdominal pains. On conducting sonography, it was revealed that she was pregnant of twenty weeks. On enquiry with the victim, it transpired that applicant had committed rape on the victim. Accordingly, the applicant was apprehended. Victim had named many other persons who ravished her. Blood sample of those

persons including the applicant was taken for DNA analysis. Sample was sent to the Chemical Analyser. On receipt of report of DNA, it transpired that applicant is not the biological father of the fetus.

3. Learned APP Shri Deshmukh submits that the victim identified the applicant to be the person who ravished her. Learned counsel Shri Bhide invited attention of this Court to Section 54-A of the Code of Criminal Procedure. Section 54-A of the Code of Criminal Procedure reads thus :

54-A Identification of person arrested -

Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with :

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be

Videographed.

4. Proviso to Section 54-A of the Code of Criminal Procedure clearly mandates that if a person identifying a person arrested is mentally or physically disabled, identification should be done under the supervision of a Judicial Magistrate. Second proviso mandates that such identification process should be videographed. Thus, a completely different procedure is contemplated for identification of a person arrested by a mentally or physically disabled person.

5. Charge-sheet is filed. The papers do not disclose that the procedure contemplated under Section 54-A of the Code of Criminal Procedure has been adhered to. Even identification parade is not held before the Tahsildar. Some photographs were shown and the victim identified the applicant as the person who ravished her. Such identification is against the provisions of Section 54-A of the Code of Criminal Procedure. Even otherwise, the DNA report does not implicate the applicant to be the person who had physical relations with the victim. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.

ii) Applicant be released on PR Bond of Rs.15,000/- (Rs. Fifteen Thousand) with one solvent surety in the like amount in connection with Crime No. 188/2021 registered with Pahur Police Station, Tq. Jamner, Dist. Jalgaon for the offence punishable under Section 376(2)(i) of the Indian Penal Code and under Sections 4, 8, 10 of Protection of Children From Sexual Offences Act and Section 3(1)(r)(s)(w)(i) (ii), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, on condition that he shall not tamper the prosecution evidence and shall not enter the village Bilwadi, Tq. Jamner, Dist. Jalgaon, till the conclusion of the trial.

iii) Application stands disposed of.

(M. G. SEWLIKAR)
Judge