

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.694 OF 2022

Ashutosh Ananta Pingale

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Nitin Gaware-Patil a/w. Mr. Tejas Puneekar i/b. A.D. Nagdode, for the Applicant.

Mr. Y.Y. Dabake, APP, for the State.

**VISHAL
SUBHASH
PAREKAR**

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Date: 2022.07.15
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CORAM : N. J. JAMADAR, J.

DATE : JULY 08, 2022

P.C.:

1. The applicant is arraigned in C.R. No. 294 of 2021 registered with Paud police station, Pune for the offences punishable under sections 307, 312, 109, 504, 506, 507, 354 and 323 read with 34 of Indian Penal Code, 1860.

2. The indictment against the applicant can be stated as under:-

Sachin Ingale, the co-accused, is the friend of the applicant.

The co-accused Sachin allegedly sexually exploited the prosecutrix resulting in pregnancy. On 17th October, 2021 the applicant accosted the prosecutrix. The applicant made the prosecutrix to have a conversation with co-accused Vijay Ingale. The later threatened the prosecutrix not to implicate him in the case which she had initiated against the co-accused Sachin Ingale. At the behest of the co-

accused Vijay, the applicant allegedly started assaulting prosecutrix. He pulled the hairs of the prosecutrix. Though the prosecutrix implored the applicant not to beat as she was pregnant by five months, the applicant gave kick blows on the stomach and back of the prosecutrix. The applicant allegedly attempted to throttle the prosecutrix. In the rage, the applicant shouted that he would finish off the prosecutrix and the child she was carrying and thereby the task of the co-accused Sachin Ingale would be accomplished. The persons who gathered saved the prosecutrix from the clutches of the applicant. Thereafter, the prosecutrix approached the police station and lodged the report.

3. I have heard Nitin Gaware-Patil, learned counsel for the applicant, and Mr. Dabake, the learned APP, for the State. With the assistance of the learned counsel, I have perused the report under section 173 of the Code and the documents annexed with it.

4. The learned counsel for the applicant submitted that the version of the prosecutrix is inherently improbable. The prosecutrix has given an exaggerated account to rope in applicant in the grave offences punishable under section 307 and 312 of the Penal Code. The charge under section 312 of the Penal Code is

wholly unsustainable as there was no miscarriage as such. The claim of the prosecutrix that there was an attempt to commit her murder is belied by the injury certificate and the statements of the witnesses who allegedly witnessed the occurrence.

5. The learned APP fairly submitted that the material on record does not indicate that the prosecutrix suffered miscarriage on account of the assault by the applicant. Thus, the offence punishable under section 312 of the Penal Code, in the circumstances of the case, may not be attracted. The learned APP, however, submitted that the fact that the applicant brutally assaulted the prosecutrix despite being aware of the fact that she was carrying five months pregnancy would bring the act of the applicant within the ambit of section 307 of the Penal Code.

6. I have given anxious consideration to the aforesaid submissions. At the outset, it is imperative to note that on the very day of the occurrence, the prosecutrix was examined at Symbiosis University Hospital and Research Centre. The prosecutrix had narrated the history of assault. Blunt trauma over left side lower back, inter alia, were noted. The prosecutrix was treated on OPD basis. Another injury certificate dated 26th October, 2021 records

that the prosecutrix had Blunt trauma to neck, Blunt trauma over left side lower back, Blunt trauma over left knee and over left forearm. The medical officer opined that the injuries were grievous in nature.

7. It defies comprehension as to how the blunt trauma to neck, over left side lower back and over left forearm could have been designated as grievous injuries.

8. The prosecutrix was advised USG for fetal well being. The ultra sound examination report dated 26th October, 2021 does not indicate that any abnormality of the fetus was noticed. It does not seem it was the case of the prosecutrix that the alleged assault resulted in miscarriage. Thus, the charge of causing miscarriage punishable under section 312 of the Penal Code, is not made out.

9. On the aspect of the alleged assault, perpetrated by the applicant, I find substance in the submission of the learned counsel for the applicant that the eye witnesses account does not lend support to the version of the prosecutrix to the extent desired by the prosecution. Akshay Shirke, Kalpesh Raut and Prashant Kirve, who claimed to have witnessed the occurrence, have consistently

stated that the altercation ensued when the applicant questioned the prosecutrix as to why she was defaming him though he had no concern with her. The prosecutrix allegedly started abusing the applicant and caught hold of him by the collar of his shirt. The applicant got enraged. The applicant started to assault the prosecutrix. The applicant and prosecutrix were separated and the quarrel was resolved.

10. The learned APP would urge that the aforesaid statement, if properly construed, would support the claim of the prosecutrix that she was assaulted. I am afraid even if the aforesaid submission of learned APP is given full play, the complicity of the applicant for the offence punishable under section 307 of the Penal Code can hardly be said to have been *prima facie* made out. On the contrary, the witnesses have stated a counter version which competes in probability with that of the prosecutrix. This factor coupled with material on record to show that the prosecutrix had suffered only blunt trauma on non-vital parts of the body, renders it rather difficult to accede to the submission on behalf of the prosecution.

11. It seems that the investigation is practically complete. Statements of the witnesses have been recorded. The applicant is

not alleged to have used any weapon. Thus, the detention of the applicant appears unjustifiable.

12. The learned APP submitted that few crimes have been registered against the applicant at Paud police station. Thus, the release of the applicant would pose threat to the safety of the first informant. It appears that few bodily offences have been registered against the applicant. However, having regard to the nature of the accusation, in the case at hand and the context in which the alleged incident occurred, in my view, the antecedents of the applicant do not dis-entitle him from the exercise of the discretion. Appropriate conditions would serve the ends of justice.

13. For the foregoing reasons, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Ashutosh Ananta Pingale be released on bail in connection with C.R. No. 294 of 2021 registered with Paud police station, Pune on furnishing a P.R. Bond in the sum of Rs. 30,000/-

and one or two sureties in the like amount, to the satisfaction of learned Sessions Judge.

3] The applicant shall attend Paud police station on first Monday of every month in between 10 am to 1 pm for a period of one year or till framing of the charge whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses. In particular, the applicant shall not contact the prosecutrix for any reason whatsoever.

5] The applicant shall regularly attend the proceedings before the jurisdictional Court.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)