

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.27 of 2022

Shiva Arjun Rathod

vs.

The State of Maharashtra, through PSO Digras, District Yavatmal

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Mr. S.G. Varshani, Advocate for the Applicant.
 Mr. V.A. Thakare, A.P.P. for the Non-Applicant/State.*

CORAM : SURENDRA P. TAVADE, J.

DATE : 19th JANUARY, 2022.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

02] This is an application filed by the applicant for apprehending his arrest in connection with Crime No.1168/2021, registered with Police Station Digras, District Yavatmal for the offences punishable under Sections 366, 376(2)(n), 504, 506 read with Section 34 of the Indian Penal Code.

03] The F.I.R. was filed by one Payal Anil Rathod on 09/10/2021. It is alleged against the applicant that on 23/08/2021 at about 04:30 p.m., she had been to the back side of her house for throwing garbage along with her son. At that time, accused Vitthal Ade came there and asked the victim to talk to him. Then, accused Vitthal threatened the victim and forcibly taken her on his motorcycle. Thereafter accused Vitthal called the present applicant-accused. It is

alleged that the present applicant took the victim at Murtizapur by bus along with her son.

04] The applicant offered tea to the victim and thereafter she became unconscious. The applicant took gold ornaments of victim and sold in the market. Thereafter, the applicant took the victim to Surat by Railway and they stayed in one private room for 17 days, where she was subjected to sexual assault. It is alleged that the applicant called his brother co-accused Pandit, who brought the victim to Digras Police Station. At that time, the applicant threatened the victim that if she lodges report with the police, she will be killed. Thereafter she lodged report.

05] It is contended in the application that the applicant is a married person and has two daughters. It is contended that the informant-victim is a married lady. She married to one Anil Rathod, resident of Sukalu, Tahsil Arni, District Yavatmal. She had a son out of the said wedlock. It is contended that the husband of the victim met with an accident, therefore, he was not in a position to walk. It is contended that the victim left her husband and came to her maternal house at Sakhara, Tahsil Digras. The said gesture shows the nature and conduct of the victim-informant. It is contended that on perusal of the F.I.R., it appears that the victim is a matured married lady. The report shows her consent and willingness. It is contended that the victim was forcing the applicant to marry her. The applicant is already married and the victim was also married, therefore, the said marriage was not possible. It is contended that she had

prepared a false and concocted story and lodged false report. The applicant is innocent. It is contended that the custodial interrogation of the applicant is not required.

06] Since the applicant has fixed place of residence, there is no possibility of his absconding. It is contended that there is an inordinate delay in lodging the F.I.R. It is also contended that even if the story of the prosecution is accepted as it is, she had many occasions to lodge report with police at different places, but she remained silent. There is no recovery or seizure of articles from the applicant. Therefore, the physical custodial interrogation of the applicant is not required. Hence, it is prayed that the applicant be released on pre-arrest bail.

07] Notice of this application was issued to the non-applicant/State. The State has filed its reply, wherein the contents of the F.I.R. are reproduced. It is contended that the friend of the applicant abducted the victim and took her to Murtizapur, where he sold the gold ornaments and thereafter proceeded towards Surat, where they stayed there for 17 days. It is contended that the statement of the victim is recorded under Section 164 of the Code of Criminal Procedure. Similarly, the statements of other witnesses are also recorded. It is contended that the custodial interrogation of the applicant is necessary for recovery of gold ornaments and to find out the truth. It is contended that both the applicants are absconding since registration of crime. Therefore, without custodial interrogation, it is very difficult to find out the spot and recover the ornaments.

Therefore, it is contended that the application be rejected.

08] On the basis of the F.I.R., the learned Counsel for the applicant submits that the victim was never abducted. She willingly travelled along with the applicant. He also submits that on going through the contents of the F.I.R., it can be said that the applicant and the victim were having live-in relationship and she took disadvantage of the said fact and lodged false complaint. On this point, the contents of the F.I.R. are required to be seen. It is alleged against the applicant and the co-accused that both of them had sexually intercourse with the victim at different places. Therefore, the submission on behalf of the applicant that he was having live-in relationship with the informant is improbable.

09] No doubt that there is a delay in lodging the F.I.R. It appears that the victim was brought to village Digras. She went to the Police Station. It is alleged that after reaching the Police Station, the applicant and his brother assaulted and threatened her. It appears from the F.I.R. that on 23/08/2021, the brother of the victim had lodged missing report. It is mentioned in the F.I.R. that the brother of the victim had given written complaint on 12/09/2021 to Digras Police Station. The said application was again typed and it was signed by the victim and presented to police on 09/10/2021. So, it can be said that the brother of the victim had taken steps to set law in motion by submitting the application, but it was not taken on record. But the same application, which was retyped and signed by the informant, was taken on record. So, it can be

said that since arrival of the victim at Village Digras, she tried to lodge the F.I.R. Accordingly, her brother had given application, but subsequently the victim herself gave a written complaint. Therefore, looking to the nature of the offence and event occurred, the informant was under pressure. As the victim was under threat, the aspect of delay can be considered during the trial.

10] As far as the allegations of disposal of ornaments of the victim is concerned, there are specific allegations against the applicant that he took the victim to Murtizapur, where he received the ornaments, which he sold and thereafter they proceeded to Surat. So, the details of disposal of ornaments are given in the complaint. The said articles are required to be seized or investigation on that point is required to be carried out by the Investigating Officer, therefore, the custodial interrogation of the applicant is just necessary.

11] In view of the allegations made in the complaint, the Investigating Officer must get sufficient time to carry out investigation. Therefore, I am of the opinion that the applicant is not entitled for pre-arrest bail. Hence, I pass the following order:

ORDER

- The application is rejected.

*sandesh

Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 25.01.2022 13:28

JUDGE