

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

CRIMINAL APPLICATION (BA) NO. 250/2022

Dnyaneshwar Asaram Kankhare...Versus...State of Maharashtra and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.D.Raut, Advocate for petitioner
Mrs. M.H.Deshmukh, APP for Non-applicant NO.1/State
Mrs. Smita Deshpande Advocate (appointed) for Non-applicant No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 29/04/2022

1] Heard Mr. Raut, learned counsel for the applicant and Mrs. Deshmukh, learned APP for non-applicant/State assisted by Mrs. Deshpande, learned appointed counsel for non-applicant No.2.

2] The applicant has been arraigned for the offence punishable under Sections 376(2)(n), 376(d), 506(2), 363 r/w 34 of the IPC in Crime No. 411/2021.

3] Mr. Raut, learned counsel for the applicant, by inviting my attention, to the statement of the husband of the victim submits that the statement as well as the subsequent statement of the victim on 6.10.2021 (pg.107) would indicate that the applicant is not involved in the aforesaid crime and there is no linkage. He submits that except for the statement of the victim there is nothing on record to indict the applicant,

considering which, the applicant is entitled to bail.

4] Mrs. Deshmukh, learned APP for the non-applicant/State with the assistance of learned counsel Mrs. Smita Deshpande, opposes the application and submits that the said incident on 4.10.2021, is not the only incident as is disclosed from the complaint and the victim has been put to serious atrocities at the hands of the applicant. She further invites my attention to the statement of Dattu and Shyam which indicates the presence of the applicant with the victim on the fateful day, considering which, it is submitted that the application be rejected.

5] An earlier application for bail by the applicant viz. Criminal Application (BA) No. 80/2022 was not pressed by the applicant, since the charge-sheet had been filed and the applicant preferred to approach the Sessions Court. The Sessions Court by the order dated 28.2.2022 has rejected the application for bail, consequent to which this application has been filed.

6] The incident is in the intervening night of 4.12.2021 and 5.12.2021, on which date at about 1.00 p.m. when the husband of the victim had gone out of the house, the co-accused Fakira is stated to have come there and put handkerchief on her nose, as a result of which, she lost her

consciousness and was taken away by him. On 4.12.2021, a complaint was lodged by her husband stating that the victim was missing (pg 106). On 6.12.2021, the victim says, she does not remember anything (pg 107). The medical report does not indicate any injury, apparently for the reason it has been conducted on 11.12.2021 i.e. around 5 days after the incident.

7] The statement of victim under Section 164 of Cr.P.C. (pg 84) records a very sordid state of affairs, in as much as she categorically states that the present applicant with the co-accused Fakira had sexually assaulted her earlier in point of time when they were residing at her residence about a year back, 8 days prior to Diwali. Consequent to this assault, the victim was threatened with elimination of her husband and son in case she told the incident to anyone. After about a month, both of them again came back to her residence and when her husband had gone to the agricultural field at about 11 p.m. again forcibly committed sexual assault upon her. Thereafter the co-accused Fakira is said to have continuously visited her house and forcefully established relations with her under the aforesaid threat. The victim as a result of this had consumed poison on 14.9.2021, but was saved due to timely medical intervention. The applicant and co-accused were continuously threatening her on her mobile phone and were also stating, they will come again and if the victim informs to

anyone, they would do away with her husband and her son. On 4.12.2021, at about 1.00 a.m. in the night when the husband of the victim had gone out to make enquiries on account of hearing the voice of the animals, Fakira, the co-accused had come inside and put a handkerchief on her nose, as a result of which she lost consciousness. On 5.12.2021 one Dattu Pundalik Dhaiskar received the call from the co-accused Fakira stating that he and the victim were sitting on the toll-booth at Aurangabad and the victim should be collected therefrom, whereupon he along with one Shyam Dattu Harne had gone to the toll-booth and took custody of the victim. The son of the victim who was accordingly informed thereafter went and collected the victim. When the victim was taking into confidence by her husband, she has narrated the entire incidence of forcible sexual assault upon her by co-accused Fakira as well as the present applicant over a period time and the threats administered to her, considering which I am not inclined to accept the application for bail. The same is rejected.

8] The appropriate fees be paid to the learned appointed counsel for non-applicant No.2 as per schedule.

Rvjalit

JUDGE

Digitally sign by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 29.04.2022 19:26