

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.462/2022

AND

CRIMINAL APPEAL NO.228/2022

Pramod S/o Maroti Ingle,
aged 29 Yrs., Labour,
R/o Dhanki, Tq. Umarkhed,
Dist. Yavatmal
(District Prison Yavatmal)

...

Appellant

- Versus -

1. State of Maharashtra,
through its Police Station Officer,
Police Station, Bittergaon, Tq.
Umarkhed, Dist. Yavatmal.
2. XYZ,
In Crime No.273/2021,
Police Station Officer, Police
Station Bittergaon, Tq. Umarkhed,
Dist. Yavatmal.

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Respondents

Mr. Anuj Patil, Advocate for the appellant.

Mr. S.S. Doifode, A.P.P. for Respondent No.1.

Mr. J.D. Bastian, Advocate for Respondent No.2.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 23.6.2022

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard. **Admit.** Heard finally by consent.

2. Respondent No.2 has filed an application, which is taken on record making statements in support of the appellant. Respondent No.2 states that she has no objection if this appeal is allowed and bail is granted to her husband. Respondent No.2 has not stated anything about the incident narrated in her F.I.R.

3. Learned counsel for the appellant submits that when the victim herself has given her no objection, this appeal must be allowed.

4. Shri Doifode, learned A.P.P. opposes the grant of appeal. He submits that the allegations are of very serious nature and they make out a *prima facie* case against the appellant for an offence punishable under Section 376 of the Indian Penal Code. He also submits that if the appellant is released on bail there would be a possibility of appellant tampering with the prosecution witnesses.

5. On going through the documents filed on record and the submissions made by learned A.P.P., we find that the allegations are serious in nature and describe in detail the ordeal of the victim i.e. respondent No.2. They *prima facie* indicate that it were the appellant - husband of respondent No.2, who himself had forced her to have sexual intercourse with his friend against her wishes. They also *prima facie* suggest that the circumstances on the fateful night were of such a nature that there was very little in the hands of respondent No.2 to do anything to save herself from the awkward situation. There were two males in drunken state who were around her and who were hell-bent to

see that the dignity and womanhood of the victim were razed to the dust. Apart from this, small children of respondent No.2 were also sleeping in the house and it was also necessary for respondent No.2 to avoid to do anything in that evening which may have awakened her asleep children only to see the shamelessness of their father and father's friend. In these circumstances, incident of rape had taken place and these circumstances would reasonably indicate that not only the offence of rape has been *prima facie* committed but, there is also a reasonable probability of the appellant tampering with the prosecution witnesses including influencing respondent No.2, victim of crime and wife of the appellant.

6. We, therefore, do not feel it safe to enlarge the appellant on bail. Besides, exercise of discretion to grant bail or otherwise of the Court is required to be exercised keeping in view the material available on record and in accordance with law and it cannot be allowed to be swayed away by some emotional

statements made by victim of crime as in the present case. In the result, the criminal application and criminal appeal are dismissed.

7. Trial be expedited and it be concluded within six months from the date of the order.

8. Learned Registrar (Judicial) is requested to send the copy of the order to the trial Court.

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9. In view of disposal of criminal appeal, this application does not survive and is disposed of accordingly.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)