

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 45 OF 2023

Rahul s/o Sureshchandra Raka,
Age : 46 years, Occu. Agriculturist,
R/o. Bhagwati Complex, Beed Jalna Road,
Georai Tq. Georai Dist. Beed.

Petitioner...**Versus**

1. The State of Maharashtra
Copy to be served on Government Pleader
In the High Court of Judicature of Bombay
Bench at Aurangabad.
2. Dhanashree D/o Paraschand Raka
@ Dhanashree W/o. Sachin Tatiya,
Age : 27 years, Occu. Housewife
R/o. C/o. Sachin Prakashchand Tatiya,
Vardhman Cloth Store, Near Gol Temple,
Main Road, Chopda, Tq. Chopda,
District Jalgaon.

Respondents...

...

Advocate for Petitioner : Mr. Kulkarni Suvidh S.
APP for Respondent No.1/State : Mr. P. N. Kutti

...

CORAM : KISHORE C. SANT, J.**DATE : 24th JANUARY 2023.**

ORAL JUDGMENT :

1. Heard the learned Advocates for the respective parties at length. The matter is taken up for final hearing at the stage of admission by consent of the parties.

2. A challenge in this writ petition is to an order dated 22.12.2022 passed by the learned Additional Sessions Judge, Beed in Sessions Case No.103/2017, thereby rejecting the application of the petitioner/accused under Section 227 of the Code of Criminal Procedure (Cr.P.C. for short) for discharge. Against the petitioner, an offence came to be lodged by his cousin for the offence punishable under Section 376 of the Indian Penal Code on 22.04.2017. After investigation, the police filed a charge-sheet. In the charge-sheet, there is also a medical certificate. The accused after filing of the charge-sheet, filed an application for discharge on the ground that there are no corresponding injuries found on the person of the victim to show that the offence as alleged has taken place.

3. The learned Advocate for the petitioner submits from the medical certificate that in column no.6, no injuries are found on labia majora.

He submits that in view of Section 375 defining the rape and taking into consideration this there has to be an injury to labia majora and since it is not found on the person, no offence under Section 376 is made out.

4. The application filed by the petitioner came to be rejected by the learned Additional Sessions Judge. The learned Sessions Judge observed that at this stage no evidence can be appreciated while passing the order on discharge application. It is observed that prima facie Regional Forensic Laboratories report is not favouring to the prosecution. However, it is observed that the seized article i.e. clothes of the victim and the accused are showing semen stains on it. The other material collected during the course of investigation and the statements recorded by the police show that the offence is made out and rejected the application. From the FIR and other material it is seen that the accused is indulging into this activity constantly since last more than 5 to 6 years.

5. Before this Court, the learned Advocate for the petitioner vehemently argued that the basic fact which will be required to be

proved in this case, is as to whether requirement of Section 375 Explanation-II itself is fulfilled. The entire prosecution would be an abuse of process of law.

6. This Court considered the submissions, documents from charge-sheet and material on record. Looking to the other material and from the charge-sheet, FIR as well as statement of the victim recorded under Section 164 clearly shows that the allegations are making out a case against the accused. There is also an evidence in the nature of video clips etc, which are allegedly recorded by the accused on his mobile phone etc, are also on record. Thus considering this aspect, at this stage, it will be highly unsafe to discharge the petitioner/accused.

7. In view of the above, this Court finds that no case is made out and this Court is not inclined to interfere in the impugned order. The Writ Petition is therefore dismissed and disposed off accordingly.

[KISHORE C. SANT, J.]