

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

CRIMINAL APPLICATION (BA) NO.21 OF 2023

Rashid Khan Razak Khan

Vs.

State of Maharashtra, through PSO, PS, Jalgaon Jamod, Dist. Buldhana and
another

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

Court's or Judge's orders.

Shri R.R. Vyas, Advocate for applicant.
Shri V.A. Thakre, APP for non-applicant no.1/State
Ms Falguni Badani, Advocate appointed for non-applicant no.2.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 24, 2023.

This is an application under Section 439 of the Code
of Criminal Procedure.

2. The applicant has been arrested on 06.12.2022 in Crime No.727/2022 registered with Police Station, Jalgaon (Jamod), District Buldhana for the offence punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code.

3. The informant is 42 years widow and was working with the applicant in the agricultural field belonging to the applicant. The prime accusation is that on the pretext that he will transfer two acres of agricultural land and a plot in favour of the informant, the applicant had established sexual relation with her. The relations were continued for about eight years. Thereafter, informant thought it proper to lodge the FIR.

4. Learned APP and learned counsel for the informant join together to contend that informant is/was helpless lady and she was at the mercy of the applicant because she had no other source of livelihood.

5. However, FIR itself indicates that the informant has two sons. Both sons are major, who can take care of the victim, hence it cannot be said that the informant is helpless a woman and was at mercy of the applicant.

6. Learned counsel for the applicant submits that informant has lodged two FIRs. He has invited my attention to the first FIR lodged on 29.11.2022 bearing Crime No.703/2022, wherein the allegations were made against the applicant that he had kidnapped informant's daughter. In that FIR, the learned Sessions Court granted ad interim anticipatory bail to the applicant on 05.12.2022. Thereafter, the informant has lodged another FIR on 06.12.2022 making allegation that the applicant has committed rape.

7. Learned counsel for the applicant has submitted that the investigating agency has thoroughly carried the investigation in the first FIR and ultimately filed with closure report, meaning thereby that there was no truth in the allegation made by the informant. Therefore second FIR is lodged. He has allegedly agreed that there was no reason why the allegations made in the FIR could not have been made by the informant when she lodged first FIR against the applicant. Even otherwise what is stated in the second FIR is

something that could be said to be consensual sexual relationship. Whether consent was obtained by fraud or misrepresentation is a matter of the trial. At this stage, considering the conduct of the informant, where the second FIR has been lodged after applicant was granted interim relief, *prima facie*, the version of the informant is doubtful and will have to be tested thoroughly. The personal liberty of the applicant as enshrined in the Constitution cannot be compromised on the basis of such allegations.

8. The charge-sheet has been filed. It is informed that the charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedence, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant owns immovable property. Thus, the applicant is having strong roots in the locality.

9. In the circumstances and considering the nature of evidence against the applicant, no purpose will be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

11. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant- Rashid Khan Razak Khan, be released on bail, in Crime No.727/2022 registered with Police Station, Jalgaon (Jamod), District Buldhana for the offence punishable under Sections 376, 376(2)(n) and 506 of the Indian Penal Code, on he furnishing P.R. Bond in the sum of ₹25,000/- with one surety in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the investigating officer and the Court concerned and shall not change the same till the final disposal of the case.
- (iv) The applicant shall regularly attend the Court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (vi)) The Applicant shall maintain law and order.
- (vii) In case of breach of any conditions, the learned

trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

(viii) Professional fees of learned advocate appointed for the non-applicant no.2/victim shall be quantified and paid, as per Rules.

The application is disposed of in the above terms.

JUDGE

Wagh