

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

CRIMINAL APPLICATION (ABA) NO. 68/2023

Mukesh Radheshyam Agrawal .vs. State of Maharashtra through its PSO P.S. Wadi,
Dist. Nagpur.

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

Court's or Judge's orders

Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 27, 2023.

Applicant and his counsel are absent. Learned A.P.P. for non applicant-State tenders reply across the bar. It is taken on record.

2. Perused the record. On 01.02.2023, following order was passed:

“Heard.

2. *The applicant apprehends his arrest in Crime No.27/2023 registered with Wadi Police Station, Nagpur on 18.1.2023.*

The F.I.R. lodged by the prosecutrix, aged 24 years, give the occurrence of events from 18.4.2018 to 15.11.2022. It is worth to mention that the applicant is a man aged 40 years.

3. *The prosecutrix has alleged that she is residing on the given address along with her parents and her father is working as an L.I.C. agent and that is how she became acquainted with the present applicant, when he had came to her house on 19.2.2018. The applicant had called the prosecutrix telepathically and wanted to have discussion with her about return of money and in his shop he forced himself upon her.*

Alleged incident of sexual assault is alleged to have taken place somewhere in April 2018 at about 8 p.m.

and thereafter the applicant committed such act on several occasions i.e. in the year 2019 and 2020 is the accusation.

She was performed to take tuition in his house, for repayment of the amount due and payable to him and when she visited his house, he forced himself upon her. In the month of May 2020 she missed her menses and realized that she was pregnant and was forced to terminate the pregnancy by the applicant on 19.5.2020 in Asha Hospital and thereafter also physical relationship was continued and once again she had to terminate the pregnancy. From April 2018 till 15.11.2022, the applicant is alleged to have repeated sexual assault and since on 17.1.2023 the applicant had also threatened her, the report came to be lodged.

4. Heard learned counsel Mr. Jaiswal and the learned A.P.P for the State.

5. When specifically asked as to whether any documents have been obtained from the complainant about her forced termination of pregnancy, learned A.P.P state that no such material has been produced by the prosecutrix before the Investigating Officer to ascertain whether her pregnancy was terminated or not in the hospital.

In any case, it can be prima facie seen that the prosecutrix is major by age and the fact that from April 2018 till November 2022 she did not report about the incident and explanation offered being that she was under a threat, cannot be taken as gospel truth unless and until the investigation is carried out in the offence. However, since there is a delay of more than 3 years in the filing of the complaint, I do not think that the custodial interrogation of the applicant is necessary, at this stage.

Hence I deem it appropriate to admit the applicant to interim protection on the following conditions.

(a) In the event of arrest of the applicant in Crime No.27/2023 registered with the Police Station Wadi, he be released on furnishing P.R. bond of Rs.25,000/- with one or more sureties in the like amount.

(b) The applicant shall report to the Investigating Officer on every Thursday between 4 to 6 p.m. for four weeks and cooperate in the investigation.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(d) The applicant shall provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

(e) The accused shall make himself available for investigation by Police as and when required.

6. Re-notify to 27.2.2023.”

3. Perused the case diary. It appears that the investigating officer has collected medical papers which show that the informant was required to undergo medical termination of pregnancy on or about 20.05.2020. When inquired, learned A.P.P. submitted that custodial interrogation of the applicant is not required because investigation is almost complete. He, however, opposed the application on the ground that there is a strong possibility of the applicant tampering the prosecution witnesses.

4. Apprehension of the prosecution can be dealt with by putting the applicant to appropriate terms. Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No.27/2023, registered with Police Station Wadi, District Nagpur, for an offence punishable under Sections 376, 376(2)(n), 354 (D), 324, 506 of

the Indian Penal Code, applicant – Mukesh Radheshyam Agrawal, be released on bail on he furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(iii) The applicant shall attend Police Station, Wadi as and when required by the investigating officer till filing of the charge-sheet.

(iv) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and to the Court concerned and shall not change the residence and mobile number(s) till the final disposal of the case.

(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 not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.

(vii) The applicant shall maintain law and order.

(viii) The applicant shall surrender his Passports, if any, before the investigating officer within a period of one week from today. If he does not possess any passport, he shall file an affidavit to that effect.

(Anil L. Pansare, J.)