

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

CRIMINAL APPLICATION (BA) NO.138/2023

Suryakant s/o Vinayak Zanzal .vs. State of Maharashtra

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

Court's or Judge's orders

Mr. N. Bhishikar, Advocate for applicant.

Mr. S. S. Doifode, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 16, 2023.

Heard.

2. This is an application under section 439 of the Criminal Procedure Code, 1973. The applicant has been arrested on 26.12.2022 in Crime No.204/2022, registered with Police Station Veltur, District Nagpur for the offences punishable under Sections 307, 452 read with Section 34 of the Indian Penal Code, 1860.

3. Having heard both the sides and having gone through the material placed before me so also statement of the victim, the victim has narrated the plight she has gone through for a considerable period. Her statement indicates that sometimes in the year 2017-18, she developed friendly relationship with co-accused namely Hitesh Rambhau Raut. Hitesh met victim's parents. Hitesh then proposed the victim for marriage, which she denied because of change in behaviour of Hitesh, in the sense he used to insult the victim in the presence of her friends. Hitesh continued to follow the victim. In the year 2020, she was admitted in Shourya Institute of Nursing and Paramedical, Umred. Hitesh followed her and harassed her. He continuously threatened her for marriage. It appears that father of Hitesh had

also called the victim on the count that Hitesh will only marry her and none else. In the meantime, the victim and her parents decided to cancel the admission taken in Umred college and got admission in the college at Bhandara where Hitesh continued to follow her and harass her.

4. On 25.12.2022, the victim came back to her house on 26.12.2022 at about 02:00 P.M., she saw one person was starting his motorcycle. The victim was sitting at her house. She was alone as her parents had left for agricultural work at about 2:00 P.M., Hitesh and the person, to whom the victim had seen starting motorcycle, came in. Hitesh insisted for marriage. The victim said 'No'. Hitesh took out a knife. The victim made an attempt to run. The person accompanying Hitesh caught hold of victim. Hitesh inflicted two knife blows on her neck and then a knife blow on her left hand. The victim made an attempt to shout but could not. She was frightened. Hitesh again attempted to give a blow on her head. She managed to dodge but sustained injury near her ear. The victim again shouted. At that time, both the assailants ran away.

5. The victim then states that later she came to know that the person accompanying Hitesh was Suryakant Zanzal, the present applicant.

6. The contention of learned counsel for applicant is that test identification parade has not been conducted. The victim has not stated before any person that the person who caught hold of her is the same person whose name is Suryakant Zanzal.

7. Thus, the applicant is making an attempt to take advantage of lapse committed by the investigating officer. The statement of victim clearly indicates that she had an ample time and opportunity to see the face of the person who accompanied Hitesh. It is not the case that the incident had occurred within seconds. In the circumstance, merely because test identification parade is not conducted, that by itself will not be fatal to the prosecution. The evidence is overwhelming. There was ample opportunity to the victim to see and memorize the face of the person who accompanied Hitesh. The manner in which victim has been harassed by Hitesh speaks volumes about her plight. There was absolutely no justification for the applicant to accompany Hitesh and secondly to help him by catching hold of the victim. The mens rea could be attributed to the applicant because of his conduct. Normally, a wise man's conduct would have been that the person like the applicant would have prevented the assault by catching hold of hands of Hitesh and not by catching hold of the victim. This act of the applicant indicates his mindset and that therefore he is equally responsible for the crime which indeed is a serious crime.

8. The charge-sheet is not yet filed. There is every reason to believe that the investigating officer will conduct the test identification parade. At this stage, no relief could be granted. The application is accordingly rejected.

(Anil L. Pansare, J.)