



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

CRIMINAL APPLICATION (BA) NO.806 OF 2023

Devanand s/o Madhukar Masram

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Shegaon BU,
District Chandrapur and another

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

Court's or Judge's orders

Mr. A. C. Jaltare, Advocate for applicant.

Mr. S. S. Hulke, APP for respondent No.1/State.

Ms. Naina P. Dhoke, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 21/12/2023

1. By this application, the applicant is seeking bail in connection with Crime No.325/2022 registered with Police Station, Shegaon BU, District Chandrapur for the offence punishable under Section 376 of the Indian Penal Code. The applicant is arrested on 21.12.2022 since then he is behind bar.

2. Learned Counsel Mr. Jaltare for the applicant submitted that the crime is registered on the basis of report lodged by victim who alleged that on 20.12.2022 her husband has received a phone call of the present applicant informing that her husband can take the engine and watered the crops with the help of said engine, therefore, she along with her husband came in the agricultural field of present applicant, at the relevant time, the present applicant asked her husband to bring

Kharra from the village and after her husband left the agriculture field, he has pulled her and subjected her for forceful sexual assault. On the basis of said report, police have registered the crime.

3. After registration of the crime, victim was referred for medical examination. During medical examination, some external injuries on her back are found. The statement of the husband of the victim is recorded from which it revealed that though he was sent by the present applicant to bring Kharra but he returned from the boundary and witnessed the incident. On the basis of said, the investigation is carried out by the Investigating Officer and the charge-sheet is filed against the present applicant.

4. Learned Counsel further submitted that in fact, it was a consensual act but as husband has witnessed the same, this false report is lodged against the present applicant. Now, investigation is completed and charge-sheet is filed and further incarceration of the present applicant is not required and no purpose will be served by keeping the applicant behind bar.

5. Learned APP and learned Counsel for the victim strongly opposed the application on the ground that the statement of the victim is substantiated by the medical certificate which shows that the victim is subjected for forceful sexual assault and prays for rejection of the application.

6. Heard learned Counsel for the applicant, learned APP for the State and learned Counsel for the victim. Perused the investigation papers. As far as the statement of the victim and her husband it was the applicant who has subjected the victim for sexual assault in the agriculture field. Admittedly, victim is a married lady. During medical examination, no injuries are found on her genital. The injury found is on the back i.e. in the nature of contusion and on shoulder. As far as the defence of the present applicant is concerned, it was a consensual act is the matter of evidence and cross-examination. Now, the investigation is completed and charge-sheet is filed. Learned Counsel for the applicant submitted that yet charge is not framed and the trial will take its own time for final decision. By keeping the present applicant behind bar, no purpose will be served.

7. After considering the allegation against the present applicant and submissions made by the learned Counsel for the applicant as well as considering that though charge-sheet is filed, trial is not yet started and it will take its own time for final decision. No purpose will be served by keeping the present applicant behind bar. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.

(ii) The applicant **Devanand s/o Madhukar Masram** be released on bail in connection with Crime No.325/2022 registered with Police Station Shegaon BU, District Chandrapur for the offence punishable under Section 376 of the Indian Penal Code, on executing PR bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Arjuni, Tq. Warora, District Chandrapur, till culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(URMILA JOSHI-PHALKE, J.)