

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

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CRIMINAL APPLICATION (BA) NO. 1444/2022

Rahul s/o Pandit Ade

.. Applicant

versus

The State of Maharashtra
Th: Its PSO PS Mahagaon
Dist. Yavatmal and another

.. Respondents

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Mr. H.Dhumale with Mr. Mohan A.Vishnu, Advocates for the applicant
Mr. I.J.Damle, APP for Respondent No.1-State
Mr. R.J. Shinde, Advocate for Respondent No.2
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CORAM: ANIL L. PANSARE, J.

DATED : 14th February, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in Crime No. 390/2022 for the offences punishable under Sections 376 and 324 of the Indian Penal Code registered at Police Station, Mahagaon Dist. Yavatmal.

2. Briefly stated, the applicant is accused of committing rape of informant. The informant has lodged the report on 5th June 2022 stating therein that she along with her husband were doing agricultural work in the field. At about 1.00 p.m., the husband of informant left to fetch drinking water. The applicant came there and asked the informant as to where her husband is, to which she replied that he has gone to fetch the drinking water. At that time, the applicant forced himself upon

her and committed sexual intercourse without her consent. The informant made an attempt to push the applicant, but failed. She could not shout because her mouth was forcibly closed by the applicant. The informant fell down and sustained injury on her head. Thereafter, the father-in-law and grandson of the informant came there on a motorcycle. Seeing them, the applicant took to his heels. After some time, the informant's husband too came there. The informant narrated the incident to him. All of them then approached the Police Station and lodged the report.

3. The learned counsel for the applicant has invited my attention to the statement made by the informant u/s. 164 of the Code in which the informant has stated before the Magistrate that the incident in question has occurred on 1st June 2022. She stated that when her husband went away to fetch drinking water, the applicant came at the field and forced himself upon her. At that time, she shouted loudly. Upon hearing her shouts, her father-in-law and grandson came there. Her husband also came there. Seeing them, the applicant ran away.

4. Thus, there is material contradiction in the version of the victim before the Police and the Magistrate. The informant states before the police that the incident had occurred on 5th June 2022 whereas she stated before the Magistrate that the incident had occurred on 1st June 2022. She has stated before the police that she could not shout because her mouth was shut by the applicant, whereas before the Magistrate, she stated that she shouted loudly. In her statement before the police she stated that the father-in-law and grandson came there on a motorcycle. As against, before the Magistrate, she stated that the father-in-law and

grandson came there upon hearing shouts from the informant. Further there is absolutely no evidence to connect the applicant with the crime u/s 324 of the IPC.

5. That apart, when the informant was taken for medical examination, she narrated an altogether different date of the story inasmuch as she has stated that the incident has occurred on 3rd June 2022. Thus, the informant appears to be not sure of the date of the incident.

6. The statement of the father in law is also recorded. He has a different story to tell. He states that when he was going on a motorcycle, he saw towards the field and noticed that his daughter-in-law (informant) and the applicant were under the *neem* tree at about 1.00 p.m. After seeing them, he asked his grandson to take the motorcycle to the field. The applicant seeing the father-in-law ran away. Thus, the father-in-law does not say that he heard the shouts of informant.

7. In other words, the informant has a different version on the date of offence so also the manner in which the offence has been committed. It appears that the father-in-law has not really supported the informant's version, at least on the point that he came to the spot upon hearing shouts of informant. The different versions raises serious doubt of the correctness of the allegations.

8. The applicant is behind the bars since 3rd August, 2022. The charge-sheet has been filed. The charge has not yet been framed and it

will take some time to commence and conclude the trial. When enquired, learned Advocate for the applicant states that there are no criminal antecedents against the applicant. He is residing in the village for last so many years. In view of the above and considering the nature of evidence against the applicant, I am of the view that no fruitful purpose will be served by keeping him behind the bars.

9. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

10. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant- Rahul Pandit Ade, be released on bail, in connection with Crime No. 390/2022 registered with Police Station Mahagaon Dist. Yavatmal for offences punishable under Sections 376 and 324 of the Indian Penal Code, on he furnishing P.R. bond in the sum of Rs. 25,000/- with one solvent 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 residence 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 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.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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