

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 BAIL APPLICATION NO. 1737 OF 2024
WITH
CRIMINAL APPLICATION NO. 4266 OF 2024
IN BA/1737/2024

BHIM NARSING MORE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Gangakhedkar Shailendra S
APP for Respondent/State : Mr. B.A. Shinde
Advocate for assisting APP : Mr. S.R. Shirsat
...

CORAM : ARUN R. PEDNEKER, J.
Dated : November 18, 2024

PER COURT :-

1. For the reasons stated in the application filed for assisting APP, the application is allowed. Mr. Shirsat, learned counsel is allowed to assist the learned APP.
2. Heard Mr. S.S. Gangakhedkar, learned counsel for the applicants, the learned APP for the respondent-State and Mr. Shirsat, learned counsel assisting APP.
3. The applicants are seeking bail as they were arrested in connection with Crime No. 208/2024 dated 31.5.2024, registered with **Aurad Shahajani** Police Station, District Latur for the offences punishable under sections 312, 315, 452, 323, 504, 506 r/w. 34 of I.P.C.
4. It appears from the FIR that the applicants - Bhim More and Ganpat Shinde and other two lady accused entered the house of the complainant/victim on 30.5.2024 and applicants had given fist blows and

kicks on the stomach of the complainant in which she sustained simple injuries. At the time of incident, the complainant was carrying one and half months (six weeks) pregnancy and due to assault made by the applicants, it is alleged that the complainant has suffered miscarriage. The FIR was registered on 31.5.2024 at 18.13 hrs. It is also alleged in the FIR that while assaulting on stomach of the complainant with fist blows and kicks, the accused have threatened that they will destroy seed in the womb of the complainant (meaning thereby that they will destroy child).

5. In the instant case, after the investigation is completed, chargesheet is filed. The bail application filed by the present applicants was rejected by the learned Additional Sessions Judge, Nilanga vide order dated 6.9.2024. Vide order dated 15.10.2024 in ABA No. 1083/2024 anticipatory bail has been granted by this Court to the other lady accused.

6. The learned counsel appearing for the applicants submits that while granting bail to the other accused, this Court vide order dated 15.10.2024 observed that certificate issued by the doctor, who is pediatrician himself is doubtful. The learned counsel submits that six weeks pregnancy is too early to be noticed and the applicants would not be aware of the same. The learned counsel submits that other three eye witnesses in their police statement have not corroborated the version of the complainant/first informant that the applicants have threatened that they would destroy the seed of the complainant. Other three eye witnesses have categorically stated in their police statement that the complainant was beaten by fist blows and kicks, however, they have not corroborated the second part of the statement of the first informant as regards destruction of the child in

her womb. The learned counsel submits that by no stretch of imagination, the applicants were aware that the complainant was pregnant by six weeks. The learned counsel submits that earlier sections 312 and 315 were not added by police when the offence was registered, but later on when one private doctor opined that there could be possibility of miscarriage and when the Government doctor has reported on 29.6.2024 that there could be possibility that the complainant could have undergone abortion, the offences under those sections is registered, though no conclusive evidence is there.

7. Considering the overall facts of this case, this Court vide order dated 15.10.2024 in ABA No. 1083/2024 has observed that Gynecologist did not treat the complainant immediately and the pediatric doctor has opined that the possibility of abortion cannot be ruled out, there could be many medical reasons for abortion/miscarriage and in absence of use of any weapon and clear opinion of the doctor, anticipatory bail has been granted by this Court to the other lady accused.

8. In the given facts situation, it appears that investigation is complete. Chargesheet is filed and the applicants are in jail since 13.6.2024. In my prima facie opinion, on the basis of above evidence at this stage mens rea for offences under sections 312 and 315 of I.P.C. cannot be inferred. Three eye witnesses have also not entirely corroborated the stand of the informant more particularly about destruction of child in womb. Injuries on the victim are simple in nature.

9. In view of the above, the application is allowed in the following

terms :

a] The applicants shall be released on bail in connection with Crime No. 208/2024 dated 31.5.2024, registered with **Aurad Shahajani** Police Station, District Latur for the offences punishable under sections 312, 315, 452, 323, 504, 506 r/w. 34 of I.P.C., on furnishing PR bond of Rs.15,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

b] The applicants, upon being released on bail, shall not contact the informant or witnesses in any manner whatsoever, during the pendency of the trial.

c] The applicants shall co-operate with the trial Court and shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

d] The applicant shall not tamper with the evidence of the prosecution and shall not influence the informant, witnesses and other persons concerned with the case.

e] The applicants, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

10. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the

disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application stands disposed of.

(ARUN R. PEDNEKER, J.)

ssc/