



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

CRIMINAL APPLICATION (BA) NO.194 OF 2024
(Gangadhar Ganesh Jambhule Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.S. Sohoni, Advocate for the applicant.
Mr. U.R. Phasate, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MAY 2, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 17/10/2023 in connection with Crime No.324/2023 registered with Police Station Shegaon, District Chandrapur for the offence punishable under Sections 376(2)(l), 366 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by mother of the victim on an allegation that her daughter aged about 19 years is suffering from mental disability since her childhood. It is alleged that from last three days of the lodging of the FIR her daughter was not well, and therefore, she along with her husband at house on 16/10/2023 at about 3:00 p.m. she had been to the agricultural field to collect the soyabean crop and her daughter along with mother-in-law were at home. At about 5:00 p.m. her mother-in-law came in the agricultural field and she left her agricultural field

at about 5:00 p.m. When she returned at home, her daughter was not in the house, therefore, she searched her and while searching she went towards the shop of one Nandu Purjekar, at the relevant time she witnessed her daughter and the present applicant in the cattle shed of one Keshav Chafle. At the relevant time, she seen her daughter in a disrobe condition and the applicant was seen lying on her person. After seeing them he ran away from the spot of incident. On the basis of said report, police have registered the crime.

3. Learned Counsel for the applicant submitted that as far as the implication of the present applicant is concerned which is a false implication due to the previous enmity. He further invited my attention towards the previous FIR's lodged on the basis of the report lodged by the present informant and submitted that she is in habit of lodging the false report and by considering the same, this Court has released the accused therein on bail by observing this fact. He further submitted that the subsequent statement of the informant is recorded under Section 164 of the Cr.P.C. wherein she has not made such an allegation that she has seen the present applicant on the person of the victim. He submitted that there is no medical report substantiating the allegation. Now, investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required, moreover he is aged about 69 years. Considering all these facts, he be released on bail.

4. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the application on the ground that mentally retarded victim was subjected for sexual assault by the present applicant and the circumstances under which victim was seen by the informant is sufficient to show the involvement of the present applicant in the alleged offence. Considering the *prima facie* case, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the recitals of the FIR. From the recitals of the FIR, it reveals that when informant was searching her mentally retarded daughter and went towards the shop of one Nandu Purjekar in Susa village she witnessed her daughter along with the present applicant. At the relevant time, they both were in the cattle shed of one Keshav Chafle and she has also witnessed that there was no pant on the person of the victim and present applicant was lying on her person. As far as the previous FIR's are concerned, the medical report shows that victim has undergone two abortions previously and the medical certificate shows that hymen was absent. The statement of the witnesses further shows that they heard the shouts of the informant and thereafter they came to know that present applicant has subjected the victim for sexual assault and fled away from the spot of incident. Thus, as far as the previous FIR's are concerned wherein it is alleged that victim was subjected for sexual assault and she was examined and it was disclosed that she is

pregnant, regarding the same the medical certificate shows that she undergone two abortions. At this stage, considering the statement of the informant who has witnessed the present applicant lying on the person of the victim is sufficient to show the involvement of the present applicant in the alleged incident. Considering the gravity of the offence that a mentally retarded girl was subjected for sexual assault, the application deserves to be rejected.

6. Hence the application is accordingly rejected.

7. The trial Court shall not be influenced by the above observations as it is only for the purpose of bail.

(URMILA JOSHI-PHALKE, J.)

**Divya*