



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

CRIMINAL APPLICATION (BA) NO.316 OF 2024
(Rajkiran s/o Jiyalal Chandrahas Vs. The State of Maharashtra)

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

Court's or Judge's Order

Mr. A.Z. Mirza, Advocate for the applicant.
Mr. A.B. Badar, APP for the State.

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 16/09/2023 in connection with Crime No.727/2023 registered with Police Station Gittikhadan, Nagpur, District Nagpur for the offence punishable under Sections 376(2)(n), 504 and 506 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the victim on an allegation that in the year 2021, the applicant and the victim were residing at their respective houses which were adjacent to each other. On 09/09/2021, when the husband of the informant was out of the house for his work, at that time the applicant came at her house and pointing out the knife on her neck, subjected her for sexual assault and thereafter blackmailed her, she was abused in a filthy language. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant invited my attention towards the various statements including the statement of the children of the victim and submitted that the act appears to be a consensual act and there was no resistance by the victim when the applicant had been to her house. He submitted that in fact the false allegation is made against the present applicant. Now the investigation is completed and charge-sheet is filed. The informant denied to undergo the medical examination which creates the doubt about the prosecution case. In view of that and considering the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required, the application deserves to be allowed.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the applicant who is the neighbour, subjected the victim for sexual assault by pointing the knife on her neck and threatened her. Moreover, he threatened her that he would make her photograph viral. He submitted that considering the circumstance under which she was subjected for sexual assault, if applicant is released on bail, he would pressurize her and tamper with the prosecution evidence. In view of that application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers. The allegations of the victim is that she was subjected for sexual assault by the present applicant by using force and by threatening

her. During investigation, the statements of the children of the victim are recorded from which it reveals that present applicant used to visit their house in absence of their father. It further reveals from their statement that after he came at their house, he used to ask them to go out of the house and closed the door. From the statements of the children it shows that victim has not resisted the entry of the present applicant in the house. However, it is a matter of evidence whether the victim was threatened or there was a consensual act on the part of the victim. At this stage, considering the entire investigation is completed, charge-sheet is filed, further incarceration of the applicant is not required. Hence the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Rajkiran s/o Jiyalal Chandrahas in connection with Crime No.727/2023 registered with Police Station Gittikhadan, Nagpur, District Nagpur for the offence punishable under Sections 376(2)(n), 504 and 506 of the Indian Penal Code, be released on bail on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(iii) The applicant shall not enter into the vicinity of Bhivsenkhori, Chintaman Nagar, Nagpur till the culmination of the trial.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

6. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*