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44.ba.1121.2023.... corrected order...

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

CRIMINAL APPLICATION (BA) NO.1121 OF 2023

Rajeshkumar @ Raju s/o Nekram Patil
Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Ajni, District Nagpur 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. C. R. Thakur, Advocate for applicant.
Mr. N. R. Rode, APP for respondent No.1/State.
Ms. Jagruti Advocate h/f Mr. S. N. Nandeshwar, Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/02/2024

1. The applicant came to be arrested on 22.06.2023 in connection with Crime No.424/2023 registered with Police Station Ajni, District Nagpur, for the offence punishable under Sections 376, 376(2)(n), 323 and 506 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the victim, who alleged that the present applicant is related to her. She is a married lady aged about 28 years. The accused used to visit her house and subjected her for sexual assault forcefully. It is further alleged that he has also obtained the obscene photographs and threatened her on the day of the incident i.e. on 20.06.2023. She alleged to the subjected for sexual assault forcefully by assaulting

her and thereafter, she approached to the police and lodged the report. On the basis of report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that from the history narrated by the victim to the Medical Officer shows that it was a consensual relationship between the victim and the present applicant. Subsequently the false allegation is made against the present applicant. Now, the investigation is completed and charge-sheet is filed. As far as the further incarceration of the present applicant is concerned, which is not required. In view of that, he be released on bail.

4. Learned APP and learned Counsel for the respondent No.2 strongly opposed the application by inviting my attention towards the medical report which shows that, the victim has sustained the injury on her right wrist and medial head of right clavicle as well as abrasion present over upper 1/3rd of right chest, which sufficiently shows that force was used by the present applicant by subjecting her for sexual assault. They submitted that considering the allegation made by the victim in the First Information Report substantiated by the medical report, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant, learned APP for the State and learned

counsel for the respondent No.2, perused the investigation papers. From the recitals of the FIR, it reveals that the allegation is made against the present applicant is that he has subjected the victim for sexual assault by using force. Whereas, the history narrated by her before the Medical Officer shows contrary that there was a consensual relationship between her and the present applicant. During investigation, the statement of the son of the victim is also recorded, from which also it reveals that there was a consensual relationship between the victim and the present applicant. As far as the day of the incident i.e. 20.06.2023 is concerned, as per the allegation she was forcefully subjected for sexual assault by the present applicant. Admittedly, it is substantiated by the medical report which shows the injuries not only on the person of the victim, but it is also on the portion of the chest, which shows that there was some resistance by the victim and while resisting the act of the present applicant, she has sustained the injuries. Considering the circumstances under which the alleged incident has taken place and there was a previous consensual relationship between the present applicant and the informant. Moreover, the investigation is completed and charge-sheet is filed. The applicant is behind bar since the date of arrest i.e. on 22.06.2023. There is no possibility of conclusion of the trial in near future. In view of that, the application deserves to be considered by granting

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bail by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Rajeshkumar @ Raju s/o Nekram Patil** be released on bail in connection with Crime No.424/2023 registered with Police Station Ajni, District Nagpur, for the offence punishable under Sections 376, 376(2)(n), 323 and 506 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

Name of Police Station is corrected as per Court's order dated 22.02.2024.

(iii) The applicant shall not enter into the jurisdiction of Ajni Police Station, till the culmination of the trial.

(iv) The applicant shall not in any way contact with the victim.

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

(vi) The contravention of the above said conditions resulted into the cancellation of the bail of the present applicant.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)