



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

CRIMINAL BAIL APPLICATION (BA) NO. 339 OF 2024

Sampat Popat Chavan

Vs.

State of Maharashtra, through PSO, P.S. Hinganghat & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.P. Khajanchi, Advocate with Mr. A.M. Chandekar, Advocate for the Applicant.

Mrs. S. V. Kolhe, A.P.P. for Non-applicant No.1/State.

Ms. S.K. Phaltankar, Advocate (appointed) for Non-applicant No.2.

Non-applicant No.2 in person.

CORAM : G. A. SANAP, J.

DATED : 12th AUGUST, 2024.

. This is an application for bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC"). The applicant/accused is facing prosecution for the offences punishable under Sections 376(2)(a), 376(1), 376(2)(n) and 506 of the Indian Penal Code, 1860 (for short, "IPC"). A Crime bearing No.0236/2023 was registered against the accused at Hinganghat Police Station on 6th March, 2023 for the above offences.

2. It is the case of prosecution against the accused that, at the relevant time, he was In-charge of the Hinganghat Police Station. The informant had lodged the report against her father and brother. Serious allegations had been made in the said report by the informant against her father and brother. The accused assured to take action against her father and brother. The crime was registered on her report against her father and

brother. However, the accused developed intimacy with the victim. He took advantage of the situation of the informant. The parents of the informant have been residing at Hinganghat. The informant alone has been residing at Nagpur. The accused took advantage of this situation and committed repetitive sexual intercourse with her. The informant believed the assurance of the accused. The informant made a complaint to the superior officers of the accused. The accused, according to the informant, used his position and pressurized her. She was threatened of dire consequences in case the matter was reported to the police. According to the informant, the episode of sexual assault on her started from 19th August, 2021. She was sexually abused by the accused. In January, 2023, she made a complaint to the Superintendent of Police, Wardha by email. The informant was contacted by the accused and she was threatened of dire consequences. The wife of the accused also quarreled with her. The driver of the accused and the accused came to the house of the informant at Nagpur. The informant was threatened. She lodged the report on 6th March, 2023 at Hinganghat Police Station, and on the basis of the report, the crime was registered, as above, against the accused.

3. The accused has been arrested in this crime on 7th March, 2024. The charge-sheet in this case has been filed after the investigation on 10th July, 2024. It is the case of the accused that he has not committed any crime. The informant is suffering from mental illness. She was under the treatment of Psychiatrist. She had lodged a report against her father and brother. She had made allegation of rape on her by her father and brother. The

said crime, registered on her report, has been quashed by the High Court. It is stated that, taking advantage of situation, the informant has blackmailed the accused. He has not committed any crime. The investigation in the crime is over. The charge-sheet has been filed. His further incarceration is not necessary. If the bail is not granted, then his detention would amount to a pre-trial conviction.

4. The State has opposed this application. The informant has also filed her say. She has been allowed to intervene. In sum and substance, it is stated that the accused is a Senior Police Officer. Before registration of the crime, on the report of the informant, he threatened and pressurized the informant. Even after registration of the crime, he threatened and pressurized the informant to settle the dispute. His wife is also supporting him. His wife had also threatened the informant of dire consequences. The informant has placed on record the messages exchanged between her and the accused, whereby the threat was extended to her by the accused as well as by the wife of the accused. It is stated that, if the accused is granted bail, then he will use his position and tamper with the prosecution evidence. He will threaten and pressurize the informant. It is stated that the charge-sheet has been filed. The charge can be framed and the matter can be decided expeditiously.

5. I have heard learned advocate for the applicant/accused and learned APP for the State. I have also heard the informant in person. Perused the record and proceedings.

6. Learned advocate for the accused submitted that, in this case, the informant has taken advantage of her position and blackmailed the accused. The accused, in the submission of the learned advocate, has not committed any crime. It is submitted that the investigation is over and therefore the detention of the accused is not necessary for investigation or custodial interrogation. The accused is ready to abide by the conditions that may be imposed by the Court. It is submitted that the apprehension of tampering with the prosecution evidence and the threat to the informant is baseless. The theory of possibility of tampering with the prosecution evidence and pressurizing the informant is not supported by any material. It is submitted that his incarceration for an indefinite period is not necessary. The charge-sheet has been filed. The case may take its own time for final adjudication.

7. Learned APP submitted that the informant in her intervention application has placed on record the detailed facts related to the threat given to her and the pressure mounted on her by the accused by using his position. It is pointed out that the accused even misused his position and attempted to thwart the progress of the investigation in this case. The informant submitted that she has been under the constant spell of threat from the accused and her relatives. The informant took me through the evidence and the text messages, whereby the threat was extended to her. The messages have been annexed by the informant to her reply.

8. I am conscious of the fact that, at the stage of deciding the bail application, the merits and demerits of the case of prosecution and the evidence compiled in the charge-sheet cannot be gone into. The Court has to take a bird's eye view of the evidence to find out the nature of the crime committed by the accused, the seriousness of the crime committed by the accused, the vulnerable position of the victim of rape in the crime, the position of the accused, the likelihood of tampering of the prosecution evidence and the likely threat or attempt to pressurize the informant and the witnesses. All the above facts are required to be borne in mind while deciding the bail application.

9. It needs to be stated that the accused was the In-charge of Hinganghat Police Station when this crime was committed by him. The informant had approached the Hinganghat Police Station to lodge a report against her father and brother. It is stated in the report by the informant that at that time she met the accused. The accused assured to help her. However, he suggested her to make a friendship with him. The informant rejected his proposal. The accused, therefore, told her that he would not register the FIR. It is stated that thereafter, the accused, on 19th August, 2021, came to her house. She was alone. The accused threatened her. The accused avoided to register the FIR against her parents. The accused demanded a sexual favour for registering the FIR against her parents. She has stated that, in the meantime, one day he forcibly entered her house and committed sexual intercourse with her and prepared a video of the same. It is stated that he blackmailed her on the

basis of said video. It is, therefore, apparent that the informant otherwise had no reason to go and meet the accused. The accused, as can be seen from the record and available evidence, misused his position. He established the relations with the informant. The informant has categorically stated that the accused forcibly entered her house and committed forcible sexual intercourse with her.

10. The accused was occupying a very important position. It is seen on perusal of the record that the informant was threatened by the accused of dire consequences in case the matter was reported to anybody, including his superiors. It is to be noted that, when all this became unbearable, the informant sent a complaint by email to the Superintendent of Police, Wardha. The informant has stated that, after making a complaint to the Superintendent of Police, Wardha, the accused extended threats of dire consequences to her. It is also stated that his wife also threatened and assaulted her. It is apparent on the face of the record that the official driver of the accused had gone to the house of the informant. He had written the phone number below the bell switch of the house of the informant. The informant was threatened of dire consequences.

11. It is to be noted that the informant has been residing alone at Nagpur. There is a dispute between the informant and her parents. Her parents are residing at Hinganghat. At this stage, it is necessary to make a reference to the litigation between the informant and her parents. The informant had lodged a report against her father and brother. In the said

report, she had made a serious allegation of sexual exploitation by her father and brother. The crime, registered against her father and brother, has been quashed by the High Court. In my view, simply because of the quashing of the crime against her father and brother, the accused cannot make good his submission that the informant is not mentally sound and therefore her contention that he committed forcible sexual intercourse with her cannot be accepted.

12. The bail application made by the accused has to be decided in the teeth of the serious allegations made against him and the evidence compiled in the charge-sheet. It is submitted by the learned advocate for the accused that the evidence compiled in the charge-sheet, coupled with the conduct of the informant, would suggest that the informant was a consenting party to the act. It needs to be stated that the defence of the accused that it was a consensual act is a question of fact and would be required to be decided on the basis of the evidence at the stage of the trial. The informant has categorically narrated the incident and the involvement of the accused in the incident. Initially the accused had obtained the anticipatory bail in the High Court. The Hon'ble Supreme Court set aside the order of anticipatory bail granted to the accused. The accused was directed to surrender. The accused made an application for anticipatory bail before the Sessions Court. His application was rejected. It is necessary to mention at this stage that after setting aside the order of anticipatory bail by the Hon'ble Supreme Court, the accused sent threatening messages to the informant. It is also seen on perusal of the report that the wife of the

accused has also extended threats to the informant. It is seen on perusal of the material and factual situation that the informant is in a vulnerable position. She has been fighting a lone battle against the accused. The accused is a Senior Police Officer. The informant has stated that he has contacts in his department. It is stated that, even after his transfer from Hinganghat Police Station, he used his contacts and made an attempt to thwart the progress of the investigation.

13. It needs to be stated that the accused has filed a proceeding in the High Court for quashing the report and the charge-sheet filed against him. The said matter is subjudice. The Division Bench of this Court has stayed the criminal prosecution against the accused. It is seen that the application for bail made by the accused under Section 439 of the Cr.PC before the learned Additional Sessions Judge at Hinganghat, was rejected vide order dated 21st March, 2024. The learned Additional Sessions Judge has highlighted the relevant facts in his order. The learned Additional Sessions Judge has recorded a prima facie finding that in case the accused is enlarged on bail, then there will be possibility of tampering with the prosecution evidence.

14. On going through the record and proceeding, I am satisfied that the allegations levelled against the accused are very serious. The accused is in a dominant position. The accused is well connected. Not only the accused but also his family members have tried to threaten and pressurize the informant. The Court has to balance the interest of the accused as well as

the interest of the vulnerable victim of the crime of rape. The informant has been fighting a lone battle. In this case, there is every possibility of tampering with the prosecution evidence, if the accused is enlarged on bail. The conduct of the accused in the past indicates that in case he is released on bail, he would threaten and pressurize the informant. It needs to be stated that, in the absence of stay by the Division Bench of this Court, I would have considered the expediting hearing of the case. In view of this, I conclude that there is no substance in the application. Therefore, the application is **rejected**.

15. As far as the proceeding is concerned, it shall be kept pending for passing an order pursuant to the directions issued to the Director, Directorate of F.S.L., Home Department, Mumbai.

16. The High Court Legal Services Sub-Committee, Nagpur, shall pay the fees to the learned advocate appointed for respondent No.2, as per Rules.

(G. A. SANAP, J.)

Vijay