

ORDER BELOW EX.2 IN SESSIONS CASE NO. 11 OF 2018

The accused seeks bail u/s. 439 of Cr.P.C. He has been arrested for allegedly committing rape on differently abled person. He is in jail since 03.12.2017.

2. The prosecution case is that the informant is the mother of the prosecutrix, who is differently abled person. Except her parents she is not able to communicate with others. Her language is understood to her parents only. On 30.11.2017, at about 01:00 P.M., the informant left the prosecutrix at home and went to the stream (Odha) for washing clothes. After 15-20 minutes, the prosecutrix came there running. Her top was torn. Her lower clothes were missing. With sign language she communicated of pain in her private part. The informant examined her body and found scratches on her chest and neck. She took her home where the latter communicated her that a boy from Bhill community has committed rape on her. At that time, the informant saw a person near her field. He was accused. She confronted him but he ran away from there. One of the witness Kashinath Kadali had seen the accused sleeping near the house of informant. He also disclosed that the accused is tractor driver of Sunil Aher. He claimed to have seen the accused getting physical with the informant. On 03.12.2017, the informant lodged report when she did not find the accused to verify the incident.

3. The accused seeks bail with the submissions that the charge-sheet has been filed and the investigation is completed. There is delay in lodging the report. He denies his involvement in the alleged offence. When the accused was passing near the field of informant she got suspicious and lodged complaint against him.

There is no medical evidence to corroborate the alleged rape. Therefore, he may be released on bail.

4. The prosecution has opposed the bail application for the reasons that the offence is serious in nature. There is prima facie case of his committing rape on differently abled person. There is evidence against him showing his involvement. If he is released on bail he may abscond and pressurize the witnesses. Therefore, the bail application may be rejected.

5. I have gone through statement of the witnesses and other papers. Unfortunately the prosecutrix is differently abled person who is mental faculty has not been developed properly. She is having communication difficulties. When she was produced before the medical officer she did not co-operate to get her medical examination done. When she was produced before the Judicial Magistrate for recording statement u/s 164 of the Code of Criminal Procedure, she just kept on smiling without uttering a single word. In such cases it is very difficult to collect the evidence because rape is committed in isolation. I find the statement of Kashinath Kadali, who saw the accused getting physical with the prosecutrix in front of her house. Considering the facts of this case I am of the view that the offence is serious in nature and involvement of the accused has been made out. In the given facts I am not convinced to grant him the relief claimed. The application stands rejected.

(Sanjeev S. Sharma)
Additional Sessions Judge,
Sangamner

Date: 26.04.2018.
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