

MHGA010003892022



IN THE COURT OF SESSIONS AT GADCHIROLI
(Presided over by Shri. Uttam M. Mudholkar)
(Additional Sessions Judge)

Sessions Case No. 50/2022

(Crime No.21/2022)

Hiraman Ushtu Kodap

Aged about 24 years,

Occ- Cultivator,

R/o. Mendha Tola, Tah- Dhanora,

Dist.- Gadchiroli

.. Accused

..Versus..

State of Maharashtra

Through PSO, P.S. Dhanora,

Tah- Dhanora, Dist. Gadchiroli

.. Respondent

Adv. Shri. R.D. Gawade for the accused

P.P. Shri. A.S. Pradhan for the State

Oral Order below Exh.2

(Passed on 13.01.2023)

1] This is an application moved by accused seeking his release on bail in Sessions Case No. 50/2022 arising out of Crime No.21/2022 for the offences punishable under Secs. 376, 511, 354, 354B, 458, 323, 504 & 506 of the Indian Penal Code, 1860 (for short 'IPC') registered at Dhanora Police Station of Gadchiroli district.

2] The brief facts, which led to the filing of the charge-sheet, can be summarised as under -

That the victim lady is married one she resides with her two sons by name Narendra, who is disabled and Vishnu. On 09.03.2022 at about 9.00 p.m. her younger son Vishnu had gone out for watching a play and she was present in the house along with her disabled son Narendra. After putting off the light, she slept but felt that somebody dragged her down from the cot by holding her hand. Initially, she thought that he might be her son Vishnu and therefore, called him so but no response came from the other side. Thereafter, that person dragged her outside the house by holding her hair. When she attempted to raise shout that person gagged her mouth and brought her towards cow-shed. Thereafter, that person stated that "I will sleep with you". On hearing his voice, informant lady identified that person to be accused Hiranman. She requested him not behave so with her as she was treating him as her brother but he not only threatened her kill but kicked on her stomach and thighs. At that time she was conscious but accused tried to press her neck and thereby she became unconscious. When she regained consciousness, she saw her son Vishnu present nearby and her Saree was lying on the ground and her knicker was found missing. Her son Vishnu adjusted her clothes, brought her back inside the house, where upon she narrated the occurrences with her. As it was night time, on the next day, respectable persons in the society were called and she narrated the incident to them. Thereafter, for medical treatment she was brought to

Women and Children Hospital, Gadchiroli, where her statement as above came to be recorded. The said statement was treated as the FIR and crime as above came to be registered. Consequently, the accused came to be arrested. After having placed accused in police custody, presently he is in the judicial custody. Presently, after completion of investigation, charge-sheet has been filed and it is numbered as Sessions Case No.50/2022.

3. According to accused, he is innocent and on account of dispute, he has been falsely implicated in the present case. In fact, the sexual assault on the victim lady was committed by some third person but in order to take revenge on account of dispute, he has been implicated in the present case. He has no criminal antecedent and his family members are totally dependent upon him for their livelihood. He will not abscond and will abide by all the terms and conditions, if released on bail. On these grounds, granting of the application has been prayed for.

4. The respondent / State and the victim lady have resisted the application by filing their reply below Exh.4 & 5. According to them, the incident as reflected in the charge-sheet has taken place. There is a strong prima facie case made out against the accused and if released on bail, he will either abscond, tamper with evidence or endanger life of the victim lady. On these grounds, rejection of the application has been prayed.

5. Heard learned Adv. Shri. R.D. Gawade for the accused and learned P.P. Shri. A.S. Pradhan for the State. Perused the documents filed along with the application, reply filed by Ld. P.P. & the victim lady as well as the charge-sheet.

6. It was vehemently submitted by Ld. Advocate Shri. Gawade for the accused that, the relation between present accused & victim lady is inimical and therefore the accused has been falsely implicated in the present crime. He further submitted that the accused is innocent and will not abscond or tamper with evidence, if released on bail. He further submitted that the investigation is already over and charge-sheet is filed. So no purpose would be served by extending the judicial custody of the accused. As such, he requested to enlarge the accused on bail.

7. Per contra, learned P.P. Shri. A.S. Pradhan vehemently submitted that the accused attempted to commit rape on the victim lady, who is his neighbour and therefore, if released on bail, the accused may threaten the witnesses including the victim lady. As such, he requested to reject the application.

8. I have carefully gone through the submissions of both the sides and record. The reading of the FIR and the charge-sheet go to show that as per story reflected in the FIR, the victim lady was attempted to be raped by the accused. It is also matter of record that there is ample material in the form of charge-sheet before this Court for scrutinizing the evidence

collected by the I.O. It is alleged in the FIR that the victim lady was attempted to be raped by the accused. It is a matter of record that before filing of the charge-sheet, Cri. Bail Appln. No.71/2022 of the present accused was filed and it came to be rejected by my Learned brother Judge by passing detail order dated 13.04.2022. Now the charge-sheet is filed which gives the accused an opportunity to move the present application. On minute perusal of the charge-sheet and the previous order passed by my Learned brother Judge, it reveals that there are no circumstances at all on record to take different view in favour of the present accused than the view taken by my Learned brother Judge while rejecting his earlier bail application. The observations made by my Learned brother Judge in the earlier order are equally applicable even today.

9. The FIR as well as the statement recorded under Sec.164 of Cr.P.C. by the Learned Magistrate of the victim lady, disclosed the same story though it is worded in different words, which cannot be termed as outcome of falsity. On the contrary, such minor variations demonstrate genuineness than falsity. The medical evidence also supports the allegation of the victim lady against the accused. The accused was pre-acquainted with the victim lady and therefore, she identified him even in the darkness, by listening his voice. His presence was also witnessed by her son Vishnu, who rushed to the spot within short period of time and on seeing him, the accused ran away from the spot. The manner of assault by accused and his intention to rape her is clearly visible as he boldly stated her that "I will sleep with

you". Therefore, no much capital about the minor variations in the evidence can be made by the accused when there is sufficient prima facie material on record against the accused to show his culpability in the commission of the alleged offences.

10. As observed above, there is strong prima facie case against the present accused demonstrating his active involvement in the commission of the alleged offence of rape or attempt to commit rape. Thus, now the mere filing of charge-sheet by the investigating agency does not help the accused in getting bail. The grounds on which the earlier bail application came to be rejected, still strongly exist.

11. The offence of rape is not merely a physical assault but it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, but the rapist degrades the very soul of the helpless female. Therefore, the law and the society expects that in such cases the Court must deal with utmost sensitivity. This is a case of rape and in the normal course no lady would venture to put a question mark on her dignity or respect, in such a matter. So, the possibility of the accused being falsely implicated in the present case is very much remote. Similarly, the victim lady appears to have no axe to grind against the present accused. The offences of similar nature are rising in the society by leaps and bounds. The life and respect of the female person in the society are endangered by the presence of such persons in the society. Therefore, no lenient view of any nature can be taken in his favour.

12. Apart from this, the victim lady and the investigation officer have raised apprehension in the reply that in the event of the release of the accused on bail, he may pose threat to her life or threaten her, which appears to be plausible as the accused attempted sexually assault the victim lady by use of violence. Under these circumstances, if released on bail, there is every possibility that he may tamper with the prosecution evidence and may even abscond and thereby the trial in the present case may get delayed. Considering all these aspects, in the considered view of this Court, granting of bail in such matter would certainly be prejudicial not only to the informant lady but to the society at large. Therefore, in my considered view, there are no circumstances to exercise the discretion in favour of the present accused. In view of the above discussion, this is not a fit case to release the accused on bail. Hence, by rejecting the argument advanced on behalf of accused, following order is passed.

ORDER

The application of Exh.2 for bail by accused **Hiraman Ushtu Kodap** in Sessions Case No.50/2022 stands rejected.

Date : 13.01.2023

(**U.M. Mudholkar**)
Additional Sessions Judge,
Gadchiroli