

Order below Exh.04 in Session Case No.33 of 2024
State Vs. Gaphur Gabu Tadvı & 3 Ors.)
(CNR No. MHJG-01000-332-2024)

The application is filed by the accused no.1 Gaphur Gabu Tadvı and requested for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in Crime No. 02 of 2024 of Adawad police station, Tq. Chopda, Dist. Jalgaon under Sections 376(2)(N), 376(1), 376(D), 506 and 510 of the Indian Penal Code.

02) The applicant submitted that, though there is serious charge of gang rape but he is not involved in the gang rape. He is not concerned with the accused no.2 to 4 who has committed gang rape and therefore this accused is not liable to face the charges of gang rape under section 376-D of the IPC. From the allegations he is only liable for offence under Section 376 of the IPC. After completion of the investigation charge-sheet is filed. The accused is ready to abide with the conditions, if any, imposed by this Court. His physical custody further more not warranted therefore the application for bail.

03) The I.O. and APP have filed reply at Exh.06 and strongly opposed the application on various grounds. In short the prosecution has mention about serious nature of the offence and mental impact caused on victim after incident. However, tampering and hampering also mention in the objection. The bail application is also opposed on behalf of victim on the grounds mention by prosecution.

04) The I.O. has filed charge-sheet against four accused all four accused are behind the bar from the date of arrest. The case is pending for charge. The allegations under section 376-D are serious. The victim is major at the time of giving FIR. She reported that on 02.01.2024. She had slept in the hall room of her house. She was alone there, at about 02.00 a.m. of the night suddenly accused enter in the house asked her to allow him to have physical relation with her. He press her mouth did sexual intercourse with her and threatened her that if she discloses the incident and if she did not allow him to have physical relation with her, he will kill her. Thereafter, the accused left from there. When he was living place he asked the victim to meet him tomorrow at the place mention in her statement and if she didn't came there to meet then he will kill her. Accordingly the victim had gone at the place where the present accused has called her there both of them meet to each other. He has taken her in the isolated place where construction was going on. There he ask her to seat there and after some time he will come back. The victim was waiting there for this accused but till the evening he did not come back. There victim was alone by seeing alone to her, the accused no. 2 to 4 came near to her. Shown sympathy her taken her in the isolated place given her food and thereafter, for entire night one after other the accused no. 2 to 4 repeatedly committed rape on her. From allegations itself it appears that the victim is subject of sexual assault at the hand of all accused.

05) The four persons have committed rape on her although from the statement of victim it discloses that the accused no.2 to 4 were not known with accused no.1 and therefore the advocate of accused had repeatedly submitted that section 376-D would not attract against accused no.1 whether he is involved in the accused no.2 to 4, whether section 376-D would attract or not is the part of trial but the statement of the victim is supported by medical evidence in which her hymen shown as ruptured. The medical report shows that the victim is subject of sexual assault and the present accused is the person who is taken victim out of house at the place where victim could not take the help of any person, therefore the accused no.2 to 4 have succeeded for committing gang rape on her. The present accused is the person who has taken her in the isolated place because of his act the accused no.2 to 4 have committed gang rape on her. Therefore, prima facie from the statement of the victim medical report of the victim shows involvement of the accused in the offence. In such circumstances if he released on bail then certainly he would try to contact the victim and it would cause mental impact on her. Therefore, considering serious nature of the offence the consequences after release the accused on bail the accused is not entitled for bail.

06) On perusal of records it appeared that the jail authority do not use to produce the accused regularly before the court and therefore, till date the court could not frame charge. However, at one occasion the accused was produce before court. But they have requested time for charge. The accused are under trial, therefore it

is necessary for prosecution to take step so as to proceed with the trial. Accordingly following order is passed.

ORDER

- 1) The application is rejected.
- 2) The prosecution is to take steps at the earliest for proceeding with the trial.

Date :- 23rd December, 2024
Amalner.

(C. V. Patil)
Additional Sessions Judge,
Amalner.

Dictated on 23rd December, 2024.