



CNR: MHLA07-000089-2025.
Sessions Case No.05/2025.
State Vs. Sambhaji & ors.

ORDER BELOW EXH.7.

1. Present application has been moved on behalf of accused No.2 and 3; Amol and Vikas for releasing them on regular bail in crime No.712/2024 for the offences punishable under Section 70(1), 64, 64(m), 118(1), 115(2), 351(3) 3(5) of Bharatiya Nyaya Sanhita, registered at Udgir Rural Police Station, Dist. Latur.

2. The case of prosecution is mentioned as, informant and accused No.1 Sunil Jadhav came into contact with each other through the media of phone. In the month of October 2024, accused No.1 Sunil Jadhav asked to come the informant at village Loha for engaging her in the work available on the site. Accordingly, the informant went there. At that time, accused No.1 Sunil Jadhav came to receive her on scooty. He took the informant at Chondi, Post Dongargaon, Tq. Loha, whereat friend of accused No.1; Shivaji was staying on rent. In the evening at 5.30 pm, when Shivaji went out of the house, accused No.1 forcibly established physical relations with the informant. Thereafter, the informant was in need of Rs.70,000/-, therefore she asked the accused No.1 Sunil Jadhav for her any work for her. Thereupon, accused No.1 Sunil Jadhav asked her to come at Udgir. Accordingly, informant along with her husband came at Udgir on 03.12.2024 at 8.30 am. At that time, accused No.1 Sunil Jadhav came on motorcycle, he asked husband of

informant to wait there and he took the informant on motorcycle towards the road proceeding to Kaulkhed. Accused No.1 Sunil Jadhav took informant in the bushes available beside the road, he parked the motorcycle thereat and asked the informant that if she want any work, she has to establish physical relations with accused. At that time, accused No.2 and 3, who are friends of accused No.1, came there and asked informant as to why she is demanding Rs.70,000/- from their friend i.e. accused No.1. By saying so, accused No.2 and 3 assaulted informant on her back, on her arm with stick. Accused No.1 also beat the informant and said that he will not give money to the informant. At that time, accused No.1 Sunil Jadhav threatened informant to kill. Thereafter, accused No.1 Sunil Jadhav left the informant on motorcycle at Naik Chowk. Thereafter, informant narrated the incident to her husband, who advised her to lodge complaint against accused.

3. The grounds of bail are mentioned as, F.I.R. does not disclose the name of accused No.2 and 3. It is alleged in F.I.R. that first incident occurred on 01.10.2024 at Loha, however informant has not lodged any complaint thereat. The contents of F.I.R. disclose that there was physical relations between accused No.1 Sunil Jadhav and informant with the consent of informant. There is no direct or indirect evidence against accused No.2 and 3. Investigation has been completed. Therefore, there is no need to keep accused No.2 and 3 behind the bars. No offence attracts against accused No.2 and 3. Therefore, they are entitled to be released on bail.

4. The application is resisted by filing say at Exh.9 on the ground that on perusal of charge-sheet, it appears that accused No.2 and 3 committed rape on complainant and also they assaulted her with stick. The said stick has been seized at the instance of accused No.2 Amol Pawar. Identification parade has been conducted vide panchnama, during which the informant has identified the accused. The application is resisted on the ground that the nature of offence is serious, accused have assaulted the informant by committing rape on her. There is possibility of pressurizing the informant by accused if they are released on bail. Prima facie evidence is available against accused. There is possibility of absconding of accused.

5. It is mentioned in the say filed by informant that accused No.2 and 3 are in jail and their relatives are threatening to the informant for compromising the matter on phone having No.8310570687; otherwise informant has to face dire consequences. As such, there is threat to the life of informant at the hands of accused if they are released on bail.

6. The counsel for the applicants argued that after filing of charge-sheet, this is second bail application on behalf of accused No.2 and 3. There is no name mentioned of accused No.2 and 3 in F.I.R., it is mentioned as unknown persons. Informant by herself came to accused No.1 by calling him. In respect of first incident informant has not filed complaint. Accused No.1 and informant had relation by their consent. The informant has specifically stated that she had love affair with

accused No.1. There are no allegations against accused No.2 and 3 about the force to the informant. Investigation has been completed. Accused No.2 and 3 are in custody since 14.12.2024.

7. Learned A.P.P. argued that mere filing charge-sheet is not change in circumstance. In the supplementary statement, the informant has stated that accused No.2 and 3 have forcibly raped her and beat her. Medical examination of informant was conducted on same day, by the report of which the injuries on back, on left arm and other parts are mentioned therein. At the time of medical examination of accused No.2 and 3, they confessed before Medical Officer. Informant went to ask the work and accused took disadvantage of the situation. Considering the nature of offence and fact that there is possibility of tampering the evidence of prosecution, application deserves to be rejected.

8. While deciding the application for bail, the components are required to be taken into consideration, as the nature of offence, the nexus between applicant and the act of commission of offence, the role of applicant attributed in the commission of offence, the manner of commission of offence and also the contingency of repetition of offence by applicant.

9. Advocate for accused No.2 and 3 relied on ruling in case of **Ashok Bapurao Thorat Vs. State of Maharashtra and anr. - reported in 2007 All MR (Cri) 3464**, in which Hon'ble High Court of Judicature at Bombay, Nagpur Bench observed that the entire report itself shows that complainant was more

than 18 years of age at the time of alleged sexual intercourse; she was consenting party, in view of the said fact Hon'ble High Court granted anticipatory bail to the accused.

- In present case, it is alleged that accused No.2 and 3 committed rape on informant. As such, there is no question of consent of the informant. Therefore, above ruling is not helpful to the accused.

10. Advocate for accused No.2 and 3 relied on another ruling in case of **Pravin Ashok Rakh Vs. State of Maharashtra - reported in 2007 (1) B Cr C 228**, in which Hon'ble Bombay High Court observed that from F.I.R. it is clear that prosecutrix is consenting party, she used to go and stay with accused for several days at various places, the prosecution against accused appears to be at the behest of family member. Hon'ble High Court by considering the said aspect held that custodial interrogation is not warranted and released the accused.

- In present case, the contingency is different, the informant went to accused No.1 for asking work and by taking advantage of such need of informant, he established physical relations with informant; it is alleged by informant that accused No.2 and 3/present applicants have forcibly committed rape on her. In such circumstances, above ruling is not helpful to accused, as it is on different footings.

11. It is alleged in F.I.R. that friends of accused No.1 came at the place of incident and they assaulted informant with stick. It is mentioned in say at Exh.9 that the said stick has been

seized at the instance of accused No.2 Amol. The informant stated that accused No.2 and 3 committed rape on her. It is mentioned in the say filed by the informant that the relatives of accused No.2 and 3 are threatening her for compromising the matter and further there is threat to her life at the hands of accused No.2 and 3, if they are released on bail. Considering the nature of offence, the allegations levelled against accused No.2 and 3, possibility of tampering evidence of prosecution and all above aspects, it is not appropriate to release accused No.2 and 3 on bail. Hence, following order :-

ORDER

The application is rejected.

Date : 23.04.2025.

(Smt. R.M. Kadam)
Addl. Sessions & Spl. Judge,
Udgir.
