

Order Below Exh.11 in
Spl.(Atro) Case no.4/2018
State Vs. Jitendra Dhore+2

The applicant/accused Nitin Nasare has moved this Court under section 439 of Code of Criminal Procedure of the offence punishable under sections 376, 506, 120B of Indian Penal Code, section 66E, 67A of Information and Technology Act and section 3(2) (v) of SC and ST Prevention of Atrocities Act.

2. It is the case of prosecution that the prosecutrix, who is major lodged the complaint on 4.5.2018 contending that she herself and her family members were acquainted with Jitu Dhore the co-accused. On 3.5.2018 Jitu Dhore made a phone call to the father of complainant and asked him to send the complainant at Arvi to secure job for her. She alone went to Arvi. Accused Jitu sent the applicant and another co-accused Umesh to take the applicant. Jitu was already present in the field. Applicant and co-accused Umesh took the complainant in the field of Jitu where the applicant and co-accused committed sexual assault on her. It is also alleged that her hands and legs were tied with the rope and applicant and co-accused committed rape on her in the night. On the next day, the report came to be lodged and offence has been registered.

3. It is contended that applicant is falsely implicated in this case. The medical evidence does not show that there was any sexual assault or the marks of rope. There is no evidence as such to make out a prima-facie case against the applicant. The prosecutrix is major. The applicant is the permanent resident of Karanja (G), Dist. Wardha. He is taking the education of Engineering 2nd year. If the bail is not granted, his education carrier were ruined. Hence, this is the application.

4. The application is opposed by the State by filing say at Exh.12. It is submitted that the applicant and co-accused took the prosecutrix to the field of co-accused Jitu where the sexual assault has been committed. Her hands and legs were tied with rope and committed rape on her. The video shooting of entire act has been done. She was threatened by the applicant and others. The prosecutrix is a member of SC & ST. The offence is very serious and antisocial. If he released on bail, there is possibility of tampering with prosecution witnesses. Hence, rejection is prayed for.

5. Heard the learned counsel for both the sides. Perused the record. It seems from the record that the main accused is Jitu, who committed rape initially. As per the case of prosecution the video shooting of the entire act has been done. However, there is no document including the CD produced on record. The applicant has placed on record some photographs to show that he attended the marriage of one Laxman Wankhede on 3.5.2018, where he was present. The prosecutrix appears to be major, aged about 19 years. If we see the medical certificate, on perusal of medical certificate, it seems that the history was given by the prosecutrix herself. She gave the history that She spent some time with the accused in the field together. Accused Jitendra did sexual activity with her with her will. Thereafter, the other accused person did the same act. On the next day she asked Jitu to drop her back. So the history is silent that she was taken forcibly by applicant to the field and did the sexual activity forcibly. Moreover, the medical certificate does not show any external or internal injury on any parts of the body.

6. It is further material to note that as per the case of prosecution her legs and hands were tied with rope. Under these

circumstance some external injury might be appeared. Moreover, the applicant is Engineering student, who is taking education. He is permanent resident of place mentioned. The investigation is already complete, since charge-sheet is submitted. Under these circumstance, the personal custody of applicant is no more required. So considering all the above aspect, I am satisfied to enlarge the applicant on bail subject to following conditions.

ORDER

- i) Applicants Nitin Dnyaneshwar Nasare, in crime no.385/2018 registered at Police Station Arvi be released on executing his P.R. bond of Rs.30,000/- with one solvent surety in like amount.
- ii) He shall not tamper with the prosecution witnesses.
- iii) He shall submit the proof of his present and permanent residence.

Date : 13.12.2018

(Mangala J. Dhote)
Additional Sessions Judge,
Wardha.