

Order Below Exh.1 in Cri. B. Appln. No. 137/2022

(CNR No. MHNS010003312022)

Ganesh Rajaram Bhosale Vs. State.

Heard: Ld. Adv. Mr. S. V. Bhate for the applicant.
Ld. A.P.P. Ms. S. S. Sangle for the State.
Ld. Adv. Mr. Watpade for the interventionist/
complainant.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 in Crime No.24/2022 registered at Police Station, Mumbai Naka, Nashik, for the offence punishable under Sections 376, 377, 313, 354, 504 & 506 of the Indian Penal Code, 1860 (hereinafter referred to as IPC). It is the case of prosecution in brief that the accused/applicant had been committing sexual intercourse (including anal sexual intercourse) with the victim on the false promise of marriage since 2012. He even threatened to commit gang rape on the victim along with his friends.

2. Learned Advocate for the applicant has submitted that there was a consensual love-affair between the applicant and the complainant (both of whom were adults even in 2012). All along, the victim was well-aware that the applicant was a married man. Despite that, she willingly continued in the relationship with the applicant. He has annexed print-outs of whatsapp chats between the victim and the applicant which clearly indicate that there was not an iota of force or coercion

on the part of the applicant. In one message, the victim has asked the applicant to get 'rain-coat' (which implies protection). She has even asked him to accompany him for a drive. In addition, there are messages in which the victim has asked the applicant to buy her expensive gifts including Television etc. The applicant has also annexed photographs wherein the victim is seen enjoying the applicant's company as well as the company of his friends and can also be seen celebrating birthday etc. with him. After the date of the last alleged incident of sexual assault also, the victim can be seen enjoying with the applicant and his three male friends. If the allegation regarding the threat of gang-rape was true, the victim would not have been enjoying their company.

3. Ld. Adv. for the applicant has submitted that even after the divorce of the applicant from his first wife, the victim willingly continued the relationship with him. It is only after he got married the second time and only after he refused to sponsor the victim's demand for a paper-bag manufacturing machine that the victim has leveled these false allegations against him. It is unbelievable by any stretch of imagination that the applicant could have forced/coerced the victim for a long period of 10 years into having sexual intercourse with him. This a classic case of abuse of the process of law. In the case of **Mahesh Balkrishna Dandane V/s. State of Maharashtra 2014 CJ(Bom) 3051** where facts were similar

in nature, the Hon'ble Bombay High Court was pleased to grant bail to the accused. Applicant is ready to abide by the terms and conditions imposed by the Court.

4. Per contra, Ld. A.P.P. has vehemently opposed the application on the ground that the offence is serious in nature. Investigation is in progress and charge-sheet is yet to be filed. It is a well-settled position that delay in lodging FIR in cases of sexual assault is not fatal. In an unreported order of the Single Bench of the Delhi High Court dated 21st October, 2021 (in Bail Appln. 2116/2021 & Cr. M. Bail 970/2021 in the case of **Ahshan Ali V/s. State**), bail was granted to the accused even though there was a delay of two months in lodging FIR. Moreover, there are whatsapp chats and bank account statements to indicate that the mother of the victim had transferred money to the applicant and therefore the victim used to ask the accused to buy things for her from the said amount already owed by him to the victim's mother.

5. I have heard the arguments of both the Ld. Advocates at length and have also perused the entire material on record. Even though the contention on behalf of the victim (that the applicant owed money to the victim) is accepted in toto, even then, *prima-facie*, it does appear to be a case of consensual relationship gone sour. Citation in the case of Mahesh (Supra) is squarely applicable to the facts of the

present case in as much as the victim here was an adult and was aware that the relationship may or may not lead to marriage. The citation in the case of Ahsan Ali (Supra) is not applicable to the facts of the present case in as much as in the case of Ahsan Ali (Supra), it was alleged that the accused had raped his own daughter-in-law and the delay was also only two months. In the case at hand, there was no such fiduciary relationship between the parties and the delay is 10 years. Material part of the investigation is over. Applicant is ready to abide by the terms and conditions imposed by the Court. In view of the foregoing discussion, I am inclined to allow the application subject to the following terms and conditions.

ORDER

- 1] Application is allowed.
- 2] Applicant Ganesh Rajaram Bhosale be released on bail by executing P.R. and S.B. of ₹30,000/- with one or two local sureties of like amount.
- 3] Applicant shall not directly or indirectly, make any inducement, threat or promises to any person acquainted with the facts of accusation, so as to dissuade him/her from disclosing such facts to the Court or to the police officer and shall not tamper with the prosecution evidence in any manner.

- 4] Applicant shall not commit any offence.
- 5] Applicant is duty bound to inform the I.O. about his change of address, if any.
- 6] Applicant shall furnish residence and ID proof of two blood relatives to the I.O.

(Order is dictated & pronounced in open court).

Nashik.
18/02/2022.

Mridula Bhatia
District Judge-2 and
Additional Sessions Judge,
Nashik.