

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 6/2020.

Rajendra Ramkrushna Malve -**VERSUS**- State of Maharashtra.

CRIMINAL APPLICATION [ABA] NOS. 23 & 46/2020.

Ravi Ramkrushna Malve -**VERSUS**- State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.P. Bhandarkar, Advocate for Applicants.
Shri B.M. Lonare, A.P.P. for the Non-applicant – State.
Shri P.R. Agrawal, Advocate for Intervenor.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 11, 2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. Criminal Application Nos. 6/2020 and 23/2020 arise out of Crime No. 1150/2019 registered at Gadge Nagar Police Station, Amravati relating to offence punishable under Sections 377, 376, 511, 354, 354-A, 506, 504, 323 of Indian Penal Code, whilst Criminal Application No. 46/2020 arise out of Crime No. 1159/2019 registered at Gadge Nagar Police Station, Amravati relating to offence punishable under

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Sections 354, 354-A and 506 of Indian Penal Code.

In Crime No. 1150/2019 applicants – Rajendra and Ravi are involved, whilst in Crime No.1159/2019 only applicant Ravi is involved. Though there are separate crimes registered at the instance of two different informants, however, as they have nexus with each other, as well as the applicants are also same, hence, for the sake of brevity, the matters are heard and decided together.

3. At the instance of FIR lodged by a grown-up lady, aged 41 years, against her husband namely Rajendra and brother-in-law namely Ravi, the crime was registered vide Crime No.1150/2019. Precisely it is alleged that the victims husband Rajendra time and again had un-natural sex with her against her consent. She has also alleged that her brother-in-law i.e. applicant Ravi used to outrage her modesty and was demanding sexual favour.

4. Another crime was registered at the instance of a young girl aged 18 years, who is daughter of informant of Crime No.1150/2019, meaning thereby, is also daughter of applicant Rajendra. The girl has alleged against Ravi [her

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uncle], that while she was studying in 10th standard, at that time applicant Ravi has inappropriately touched her and as such outraged her modesty.

5. The learned counsel for applicants would submit that both the complaints are nothing but, an outcome of a matrimonial flued. According to him in order to settle the score and to deprive the brothers from the immovable property, false complaints were simultaneously filed on the same day by mother and daughter.

6. The State has resisted all the applications by filing reply affidavit. In reply the case of prosecution has been reiterated. It is contended that the offence is of serious nature and there is likelihood of tampering, hence, applicants are not entitled for pre-arrest bail.

7. Learned counsel for the intervenor also opposed the bail in moderate way. However, he has put additional grievance that some educational documents of daughter i.e. informant in Crime No.1159/2019 are with her father i.e. applicant Rajendra, which are required to be returned.

8. The entire episode is an outcome of a

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matrimonial discord between a couple. The marriage of strained couple sailed smoothly for long 21 years and had two children from the said wedlock. After such a long time, the wife has alleged about unnatural sexual acts at the hands of her husband. Though it is alleged that since inception, husband was prone to seek for unnatural sex, however, after long gap of 21 years the matter has been reported to police. At this juncture I am tempted to mention that by virtue of decision of Hon'ble Supreme Court in case of **Navtej Singh Johar and others .vrs. Union of India and others - 2011 (10) SCC 1**, unnatural consensual sexual acts of adults in private are de-criminalized. In the light of such position, the offence will be attracted only if it was without consent of the adult. This has bearing since after 20 years from first occurrence, a report has been lodged.

9. The story unfolds that the allegation is running for a period of 20 years, but, complaint has been lodged thereafter. Moreover, the FIR discloses that the period of offence is in between 03.12.2019 to 04.12.2019, but, the matter is reported after few days to the police. There is no medical evidence

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supporting the allegations leveled in the complaint.

10. As regards to Crime No.1159/2019, the allegations are lacking of details of the incident. It is only contended that while the informant girl was in 10th standard, at that time applicant Ravi has sexually harassed her. In none of the reports there are details as to when the alleged incident had occurred.

11. Pertinent to note that though the alleged incidence happened long back, however, both the FIRs are simultaneously filed on 08.12.2019, which speaks for itself. Having regard to the nature of accusation, apparently nothing is to be seized from the applicants, nor any fruitful purpose would be served by having their custodial interrogation. One of the object of grant of pre-arrest bail is to save the applicant from humiliation. The applicant Rajendra is serving as an Engineer with Public Works Department, while applicant – Ravi is serving as Laboratory Assistant in a reputed college. Already they have attended the police station in terms of the conditions imposed on them while granting pre-arrest protection.

12. Having regard to the nature of accusation and peculiar facts of the case, both applicants have

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made out a case for grant of pre-arrest bail. They can be released in both the crimes on certain terms and conditions. In view of that, following order is passed.

- (i) In the event of arrest of applicants – Rajendra Ramkrushna Malve and Ravi Ramkrishna Malve in Crime No.1150/2019 registered at Gadge Nagar Police Station, Amravati for offence punishable under Sections 377, 376, 511, 354, 354-A, 506, 504 and 323 of the Indian Penal Code, they be released on bail on their furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount each.
- (ii) In the event of arrest of applicant – Ravi Ramkrishna Malve in Crime No.1159/2019 registered at Gadge Nagar Police Station, Amravati for offence punishable under Sections 354, 354-A and 506 of the Indian Penal Code, he be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.
- (iii) Both Applicants/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the

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evidence.

- (iv) Both Applicants/accused shall provide their residential address and cell numbers to concerned Investigating Officer and shall not change their place of residence without prior intimation to the concerned Investigating Officer.
- (v) Both Applicants/accused shall attend concerned Police Station as and when called by the investigating officer.

13. Criminal Applications are accordingly allowed and disposed of.

14. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Rgd.