

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2503 OF 2014

Yogesh Anant Raut. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 2495 OF 2014

Deepesh Chandrakant Dindekar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 2252 OF 2014

Parag Ramesh Chaudhari. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Ms. Asha Chetan Shah, advocate for applicants in BA 2503/14 and
BA 2495/14.

Mr. Rajeev Patil, Sr. Advocate a/w. Ms. Priyanka Thakur i/b. Mr.
Onkar Warange, advocate for applicant in BA 2252/14.

Ms. P.P. Shinde, APP for State in BA 2503/14 and BA 2252/14.

Ms. Vira Shinde, APP for State in BA 2495/14.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : DECEMBER 19, 2014

P.C.:

1 Heard the learned Sr. Counsel for the applicant and learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 These are applications under Section 439 of the Code of Criminal Procedure, 1973. The applicants are arrested on 16/7/2014 in Crime No. 95 of 2014 registered at Arnala Police Station for offence punishable under Section 376, 376(D), 366(A), 506 of the Indian Penal Code and under Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 3,4,5 and 7(1)(a) of the Prevention of Immoral Trafficking Act, 1956. Investigation is completed and charge-sheet is filed in the month of September, 2014.

3 It is the case of the prosecution that on 16/7/2014 the victim who is aged about 16 years filed a report at the police station that her maternal cousin sister namely Arina had induced her to accompany

her to various places. She had insisted upon the victim to have sexual relations with several people at different places and different times. That she had taken material consideration for the same. The victim was aware that Arina is receiving consideration. It appears from the statement of the victim that she was asked to accompany her cousin. It is also alleged that the date of birth of the victim is 15th April, 1998. According to the victim, she was forced into the flesh-trade from June, 2014. She has completed 16 years of age. She has stated several instances in the first information report. According to her, finally she had informed her mother about the same and then lodged the report.

4 In the present case, the applicant in Criminal Application No. 2503 of 2014 has been specifically named in the FIR. It appears from the recitals of the FIR that her cousin sister had taken her firstly to the said applicant and that the complainant had seen the applicant giving Rs. 500/- to her cousin Arina. The complainant had specifically averred that Arina had not given her any amount. She had threatened her of dire consequences. On the second day also Arina had approached mother of the victim and had requested her to

send the victim with her to Dental Clinic. The victim was misled by Arina. She had taken her to a resort. The applicant in Criminal application No. 2252 of 2014 had met them at resort. It is alleged that he had hired a room at the said resort and then ravished the victim against her wishes. He had also given money to Arina. It is alleged that the victim had again accompanied Simran(friend of Arina) to Virar. The applicant in Criminal Application No. 2495 of 2014 had also come alongwith his friends to Virar. They had been to Ganeshpuri. There they had stayed in the lodge. Deepesh Dindekar had hired a room and had taken the victim to the said room and had ravished her. It is alleged that two unknown boys have ravished her and that they were friends of Deepesh Dindekar. Simran had taken Rs. 1,000/- from the said boys.

5 This Court by an order dated 16/9/2014 has released 3 accused persons on bail. Their names were not mentioned in the FIR. As far as the applicant Deepak is concerned, this Court had observed that in the course of investigation, the investigating officer had recorded statement of the watchman of the said room. The

watchman had specifically contended that boys and girls were enjoying on the tune of music and were having fun. It is true that the victim is a minor and therefore, her consent cannot be taken into consideration. This Court had observed that no punishment is contemplated for the customer under the PITA Act.

6 Learned Senior Counsel submits that in the present case, the applicants herein had no knowledge that the victim was minor. The victim was being introduced and induced by her own maternal cousin sister. The learned Sr. Counsel submits that in the absence of any punishment for the customer under the PITA Act, the applicants at the most can be prosecuted under Section 376 of the Indian Penal Code. In the present case, Section 376(D) of the Indian Penal Code would not be applicable, as it pertains to gang rape. In the present case, there are stray incidences. The persons who had committed sexual assault cannot be said to be a members of gang or associates of each other.

7 Be that as it may, the applicants have been in jail for more than
5 months. The investigation is completed and charge-sheet is filed. It
is apparent on the face of the record that the victim has been
basically victimised by her own cousin. Hence, the applicants
deserve grant of bail. It is made clear that the principal accused Arina
shall not claim parity with the present applicants.

8 The observations hereinabove are prima facie in nature and
they pertain to consideration of application under Section 439 of the
Code of Criminal Procedure, 1973 only after filing of the charge-
sheet. Hence, the above observation need not be considered while
hearing application under Section 482 of the Code of Criminal
Procedure, 1973 for quashing of FIR or discharge application or at
the time of trial.

9 Hence, the following order is passed :

ORDER

(i) The applications are allowed.

- (ii) The applicants be enlarged on bail in C.R. No. 95 of 2014 registered at Arnala Police Station, on furnishing P.R. Bond in the sum of Rs. 15,000/- each and one or two sureties in the like amount.
- (iii) The applicants shall not tamper with the evidence.
- (iv) The applicants shall report to the concerned police station on 4 consecutive Sundays commencing from 28/12/2014 between 10 a.m. to 12 noon.

10 The application is disposed of on the above terms.

(SMT. SADHANA S. JADHAV,J)