

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 73 OF 2015

MR. APPA RAMESH HARMALKAR,
PRESENTLY IN JUDICIAL CUSTODY
MAPUSA, GOA, THROUGH RAMESH
HARMALKAR.

... Applicant

Versus

STATE, THROUGH POLICE INSPECTOR
AND ANR.,

... Respondents

Mr. Sarvadnya D. Patil, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 1st April, 2015

P.C.

Heard Shri Patil, learned Counsel for the applicant and Shri Rivankar, learned Counsel for the respondents.

2. The applicant has been arrested in connection with investigation of Crime No. 33/2015 under Section 376 of Indian Penal Code (I.P.C., for short) registered with Anjuna Police Station.

3. According to the prosecution, the prosecutrix, who is aged 23 years, is serving in Rosy Restaurant, Bardez, Goa and the applicant/accused was known to her as he was visiting the restaurant. The incident in question has allegedly occurred on 05/03/2015, while the prosecutrix was returning from the duty at the Restaurant. According

to the prosecution, at about 19.45 hours, the applicant came on his motorcycle and said to the prosecutrix that he will drop the prosecutrix to her residence. After initial hesitation, the prosecutrix accompanied the applicant. Further, according to the prosecution, the applicant took the prosecutrix near Assagao and had forcible sexual intercourse with her twice. The complaint was lodged on the next date i.e. on 06/03/2015.

4. It is submitted by the learned Counsel for the applicant that the prosecutrix is a girl, who has attained the age of consent, being 23 years of age and prima facie, the allegation would show that she had accompanied the applicant. It is also submitted that although the prosecutrix had met some police officer, the incident was not disclosed. It is submitted by the learned Public Prosecutor that the investigation is practically complete and only the report of the Chemical Analyser is awaited.

5. I have perused the case diary and the medical report of the prosecutrix, in which the Medical Officer has stated that no opinion about recent sexual intercourse can be given, however, has stated that in view of fleshy hymen, vaginal penetration cannot be ruled out.

6. I have considered the rival circumstances and the submissions made. It is neither necessary nor proper at this stage to express any final and binding opinion. Prima facie, it appears that the prosecutrix

is aged 23 years and having regard to the circumstances in which the incident is alleged to have happened and the medical report and the fact that the investigation is stated to be complete, I find that discretion can be exercised in favour of the applicant, subject to conditions. Hence, the following order :

- (i) The application is allowed.
- (ii) The applicant be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not tamper with prosecution evidence and / or threaten or interfere with the prosecution witnesses.
- (iv) The applicant shall cooperate with the Investigating Agency as and when required.
- (v) The applicant shall not leave the North Goa District, till filing of the chargesheet.
- (vi) Bail before the Additional Sessions Judge, Mapusa.
- (vii) In the event of breach of any of the conditions, liberty to the prosecution to move for cancellation of bail.

C. V. BHADANG, J.

SMA