

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 242 OF 2015**

Suhas Krushna Bandivadekar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Vinod Kashid for the Applicant

Ms. Rutuja Ambekar, A.P.P for the Respondent-State

Sr. PI Mr. Madvi from Vakola Police Station, is present

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 18TH MARCH, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 65 of 2014 registered with the Vakola Police Station, for the alleged offences punishable under Sections 363, 366A, 376D, 323, 506 r/w 34 of the Indian Penal Code.

3. The alleged incident has taken place in February, 2014 and the FIR has been lodged on 21st April, 2014. It is alleged by the prosecutrix who was aged 17 years at the relevant time, that she was working as a maid servant at Andheri. It is alleged by the prosecutrix that some time in February, 2014, she received a call from one Sachin, original accused No.4 to come down from the flat. It is alleged that Sachin came there and asked the victim girl and her friend Laxmi to accompany them. It is alleged that the co-accused Sachin and Subhash (applicant) forcibly made the victim girl sit in the rickshaw and asked Laxmi to stay in Cooper Hospital. It is alleged that thereafter, they took the prosecutrix to a building at Kurla where all other accused were present and that all the accused persons sexually assaulted her, one after the other.

4. The principal ground on which the learned Counsel for the applicant seeks bail, is that the name of the applicant as disclosed by the prosecutrix is “Subhash” in the FIR, whereas, the present applicant is “Suhas”. He submitted that there was no test identification parade held to identify the present applicant, as to whether the present applicant was

`Subhash'. He submits that neither is there any medical evidence in the form of D.N.A Report to corroborate that the applicant was `Subhash' as alleged in the FIR.

5. Learned A.P.P opposes the bail application. The learned A.P.P is unable to show that any material to show that the present applicant was `Subhash' as disclosed by the prosecutrix, who committed sexual assault on the prosecutrix and that the prosecutrix had wrongly disclosed his name as `Subhash'.

6. Perused the charge-sheet, in particular, the statement of the prosecutrix. It appears that the name of the accused is mentioned as `Subhash' in the FIR and no surname has been given. Whereas, the name of the present applicant admittedly is `Suhas'. There is no other corroborative material as of today, in the form of test identification parade or medical evidence as against the applicant.

7. As far as parity with accused No. 6 is concerned, it is made clear, that this Court has not gone into the same. No doubt, identification

in Court is also acceptable. However, in the present case, *prima facie*, only on account of the aforesaid discrepancy, that the applicant is being enlarged on bail. It is extremely unfortunate, in the manner in which, the police have investigated such a serious offence. The Investigating Officer ought to have taken steps to record the supplementary statement of the prosecutrix clarifying the same, or ought to have conducted a test identification parade. The applicant accordingly deserves to be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant Suhas Krushna Bandivadekar be released on bail in connection with case No. C.R. No. 65 of 2014 registered with the Vakola Police Station, on executing PR Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount;
- (ii) The applicant shall not enter the jurisdiction of the Vakola Police Station till the conclusion of the trial, except for the purpose of attendance. The applicant shall attend Vakola Police Station on the first and third Saturday of every month between 10:00 a.m. to 12:00 noon till the conclusion of the trial;

(iii) The applicant shall not leave the jurisdiction of Mumbai City, Navi Mumbai and Thane, without the permission of the trial Court;

(iv) The applicant shall not tamper or attempt to contact any witness concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Vakola Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) If there are two consecutive defaults in attendance, or if there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. Considering the seriousness of allegations, the trial is expedited. The aforesaid observations are *prima facie*, and the trial Court

shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.