

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2188 OF 2014

Satish @ Ram Aasare Gupta
V/s.

.....Applicant

The State of Maharashtra and another

....Respondents

Mr. A.H.H. Ponda a/w Mr. Aditya Gore, Mr. Vivek Shetty, Mr. J. Fernandes
Advocate for Applicant
Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

RESERVED ON : 11th FEBRUARY 2015

PRONOUNCED ON : 23rd FEBRUARY 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 12/05/2014 at about 8.30 pm in crime no. 148 of 2014 registered at Bhosari Police Station for offence punishable under section 376 (2) (l), (n), 376-D of Indian Penal Code. Investigation is completed and charge-sheet is filed on 04/08/2014. Case is committed to the Court of Sessions and is registered as Sessions Case No. 609 of 2014.

2) It is the case of prosecution that on 30/04/2014, daughter of Meena Ganesh Kharat was annoyed with her mother as she was not given ice-cream

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to eat. She was so enraged that she left the house. She did not return for quite sometime. Her mother Meena Kharat was searching for her. She then lodged a missing report at Dapodi Police Station. The continued to search for her. Prior to 30/04/2014 also, her daughter i.e. victim had left the house on more than one occasion. On 02/05/2014, victim girl had returned home. On the same day, i.e. on 02/05/2014, Meena Kharat lodged a report at the police station that her daughter was brought to Dapodi Police Station pursuant to the missing complaint and in the presence of the police, she has disclosed that she was ravished by some persons by taking advantage of her low IQ. She was induced to go to Pune railway station and from there, she was taken by train to Mumbai. She was initially made to stay in a lodge. She was ravished in the lodge. On the next day, she was brought to Pune. She was taken to farm house. The said person who had taken her to Mumbai had again ravished her. He had then called three friends who had ravished her one after another.

3) Victim was examined at Sasoon Hospital, Pune. Medical report show that there was evidence of recent sexual intercourse. "History of clinical findings are suggestive of penetrative sexual vaginal intercourse with

evidence of injuries over genital area and other body parts.”

4) The statement of victim was recorded in Sasoon Hospital by the police in presence of Psychiatrist. She has disclosed the trauma which she had gone through. She has narrated all the details. She has specifically stated that the person who had taken her to Mumbai had brought her back to Pune. He had called three friends. She has given the description of three friends who had ravished her one after another.

5) On 10/05/2014, police had arrested Vijaypal Bhikki Singh. He had admitted to have committed the offence. Instantly he had disclosed the names of Dilawar Hafiz Khan & Yasin Shakir Khan. All three were taken into custody. In the remand yadi dated 11/05/2014, Vijaypal Singh had disclosed that on 30/04/2014, he had taken the victim to a lodge and ravished her and on the next day he and his three friends had ravished her. The remand yadi dated 13/05/2014 shows that on 12/05/2014 present applicant was taken into custody by the police. Remand yadi is taken on record and marked as article 'X' for the purpose of identification.

6) Victim had disclosed that in all there were four persons who had ravished her. It appears from the papers of investigation that soon after he was taken into custody for inquiry, applicant herein had admitted to have ravished the victim and therefore, he was arrested on 12/05/2014. On 22/05/2014, senior P.I. had requisitioned the services of Executive Magistrate for conducting test identification parade. Learned Magistrate had granted permission for conducting test identification parade

7) Papers of investigation show that victim girl was a patient of moderate mental retardation according to ICD-10 range. Accordingly, a certificate issued to that effect by the Medical Board of Sasoon General Hospital, Pune. In the course of hearing of the present application, office of prosecution has filed affidavit on 05/12/2014 verified by Chandrakant Bhosale, Senior P.I. of Bhosari Police Station, Pune. In para 9 of the said affidavit, it was stated that test identification parade was conducted on 23/07/2014 and that applicant/accused Satish Gupta was identified by the victim herself. It is further stated that charge-sheet was filed on 07/08/2014. It is pertinent to note

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that the copy of test identification parade did not find place in the compilation of charge-sheet. On 22/12/2014, P.I. Ajay Bhosale filed second affidavit reiterating that test identification parade was held on 23/07/2014 by Special Executive Magistrate and that applicant was identified by the victim. In para 9 of the said affidavit, it is stated as follows.

“I say that at the time of argument, Hon'ble Court put a query regarding not mentioning name of present applicant in test identification parade reply to this query as only one accused was there for test identification parade hence, his name was not mentioned as presumed by Magistrate.”

8) This would show that applicant has not been subjected to test identification parade. It is apparent on the face of record that in fact, both the affidavits were drafted and filed recklessly. The solemnity of the affidavit would lose its significance. On 23/01/2015, at the time of hearing of the application before this Court, it was observed by this Court (Coram: Smt. Sadhana S. Jadhav, J.) that wrong submissions were made before the Courts in the form of affidavit that applicant has been identified in the test identification parade held on 23/07/2014. On that day, learned APP has placed

on record the report dated 28/11/2014 given by Executive Magistrate of Pimpri Chinchwad, Taluka Haveli, showing that in fact test identification parade was held on 13/08/2014, i.e. after filing of charge-sheet on 07/08/2014. This could be one of the principal reason why test identification parade/memorandum/report did not find place in the compilation of the charge-sheet.

9) A statement of the co-accused gives a direction for investigation. It, therefore, cannot be disbelieved at this stage. Admissibility of the said evidence can be considered at the time of trial. This Court is therefore, not inclined to grant bail.

ORDER

- (i) Application, being sans merits, stands rejected.
- (ii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)