

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2304 OF 2014

Saddam Husain Abdul Quddus Khan ...Applicant
vs.
State of Maharashtra ...Respondent

Mr. A.M. Saraogi i/b. H.S. Ansari, learned
Advocate for the Applicant.
Mrs. R.A. Ambekar, APP for the State.

CORAM : P.D. KODE, J.

DATE : FEBRUARY 04, 2015

P.C.

. Heard.

2. The typed copies of the statements
tendered by the learned counsel for the applicant.
The same are taken on record and marked 'X1', 'X2'
and 'X3' for identification.

3. The learned APP has objected the prayer
for bail made by the applicant charge sheeted by

Aarey colony police station, Goregaon, Mumbai for commission of offences punishable under Sections 452, 376, 506 and 324 of Indian Penal Code on the ground that the involvement of the applicant in commission of such offence is borne from the statement of the victim-first informant. It is submitted that support to the said statement is also found from the medical evidence as well as the statements of 2 witnesses namely Rahena and Naseem.

4. It is submitted that the applicant is having antecedents of being involved in the commission of offence under Section 354 of Indian Penal Code. It is submitted that merely because there is 3 days delay in lodging F.I.R., it can not be said to be a deceive fact for not accepting the version of the victim, as in such type of cases women are reluctant to rush to police due to possibility of their reputation getting tarnished and/or maligned.

5. It is submitted that the presence and the involvement of the applicant is squarely borne from the material contained in the statements of Rahena and Naseem and as such the offence committed being in respect of a married woman, the prayer for bail may not be accepted.

6. The learned counsel for the applicant pressed the prayer for bail on the ground of there being variance in the story given by the victim and the other two witnesses. It is submitted that considering the said material in proper perspective and the allegation of witness Rahena that she has found the applicant sitting in the house of the victim clearly reveals that it was a case of consensual sex and only after being caught, hue and cry has been made for implicating the applicant to save her own reputation.

7. The perusal of the charge sheet *prima facie* justifies the submissions canvassed. The

detail comments regarding the variance pointed is avoided at this stage as the same may cause prejudice to either party at the trial. However, it can be added that the statement of the victim reveals the case of rape committed by the applicant after forcefully effecting entry in her house. The said story is destroyed from the matters in the statement of Rahena in which claim seems to be that applicant was seen sitting in the house of the victim and not for a short-while but from 12.00 noon to 6.00 pm. Apparently there is unexplained delay of 3 days in lodging the F.I.R. The victim has claimed that she has narrated the incident occurred to the other ladies who had gathered at her house. However, the material in the statements of two witnesses does not reveal of herself having told about the incident.

8. Having regard to it and bearing in mind that the rape is a allegation which can be very

easily made and difficult to refute, it appears proper to exercise the discretion in facts and circumstances of present case for grant of bail.

9. Resultantly, the application is allowed. The applicant is directed to be released on bail upon furnishing P.R. Bond in sum of Rs. 75,000/- (Seventy Five Thousand) with one or two sureties to make up the like amount and subject to the conditions after release of the applicant,

(i) not entering within the area under the jurisdiction of Aarey colony police station, Goregaon, Mumbai.

(ii) staying at some other place in Mumbai and informing the place of abode to the investigating officer.

(iii) attending the local police station for the said area on every alternate Monday in between 11.00 am to 1.00 pm until further order.

(iv) not indulging in any activity of tampering the prosecution evidence and/or not indulging in any activity of coercing, threatening and pressuring the prosecution witnesses and

(v) not misusing the protection granted by this order for fleeing away or for any other oblique purpose.

Application stands disposed of.

(P.D. KODE, J.)