

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.82 of 2016

- 1) Jhakirali Mohammad Vakil Khan
- 2) Saddamhussain Gulamhussain Khan .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr.AHH Ponda with Mr.S.G.Rajput, Advocate for the applicants.

Mrs.Rutuja Ambekar, APP for the Respondent State.

CORAM : PN. DESHMUKH, J.

DATED : 15th JUNE 2016

P.C. :

1 Accused no.1 and applicant no.2 involved in Crime No.443/15 registered by Wadala Police Station for the offences punishable under section 363, 376, 212 of IPC and Section 4, 8, 10, 12 of Protection of Children from Sexual Offences (POCSO) Act, 2012 has applied for grant of bail.

2 Learned counsel for the applicant had submitted that the applicants are falsely implicated by complainant who is grand-mother of prosecutrix who is aged 3 years, and has submitted that report lodged by grand mother is an outcome of incident of assault on applicants which has taken place on 7th September 2015,

wherein applicant no.1 has sustained as many as 10 contusions and lacerated injuries.

3 Learned APP had submitted that by considering the serial number of offences registered as Crime No.443/15 and 444/15 out of which the present application arises, one can say that report lodged by grand mother of prosecutrix is first in the point of time, and as such, it cannot be said that due to registration of Crime for offences under section 307 IPC along with other offences against family members of prosecutrix, her grand mother has lodged false report against the applicants.

4 In the background of submissions advanced as aforesaid, on perusal of report on the basis of which Crime No.443/15 is registered, same appears to be of dated 7th September 2015 at around 10.00 p.m when prosecutrix since was found crying was inquired as to why she was crying upon which she stated that she is sustaining pain in her private part, and took her grand-mother to the nearby BEST meter cabin where three persons were present including both the applicants and co-accused Subhan, and pointing out to them, informed that they had removed her underwear and had inserted fingers into her private parts. According to further contents of the report, on complainant's inquiring from the applicants about the incident involving minor girl, they abused her and on pushing her, ran away from the spot, and in a short time, applicants' relations i.e. Shakil, Nazir and Shamim arrived on the spot and assaulted complainant by means of bamboo stick which was lying there.

5 So as to consider the truthfulness of present complaint, as aforesaid, the learned counsel for the applicant, has tendered at bar, report lodged by applicant no.1 with the said Police Station dated 8th September 2015 in respect of incident which has occurred on 7th September 2015 at about 10.00 pm, and on the basis of the same, offence came to be registered under section 307, 326, 144, 143, 147, 149 and 504 of the IPC against six persons who are admittedly sons and son-in-law of complainant Sadeen Nijad who is complainant in Crime No.444/15 registered against the applicants.

6 Though from the documents on record, and in view of submissions advanced by the learned APP that since Crime No.443/15 is registered first in time in serial number than Crime No.444/15, it cannot be held that no incident of assault of which Crime No.444/15 is registered, has taken place. Moreover, the date and time of both the incidents in question are same. As such, it is necessary to find out as to where-from complainant in Crime No.444/15 has sustained as many as 10 injuries found on his person who is applicant no.1 in the present application. To a specific query made by this Court, prosecution could not satisfy as to how such injuries are sustained by applicant no.1.

7 On perusal of medical report of applicant no.1 who appears to have been examined on 10th September 2015 on being referred by police, is certified to have saturated wound of 5 cm over right temporal region, and as many as four contusions of various sizes and five abrasions.

8 On the contrary, on considering medical report of prosecutrix, it is revealed that the alleged history given by her is that she was complaining of burning about four hours prior to her medical examination which is conducted in the night on 8th September 2015 at about 12.15 am, while the incident is alleged to have occurred at 10.00 p.m, and has stated names of persons, as that of applicant no.1 and one Azhar Hussain Khan who is admittedly released on bail by the trial Court. No name of applicant no.2 Saddam is given by the prosecutrix.

9 Even otherwise, from the medical report of prosecutrix, no recent superficial external injuries were found present, nor there is any evidence of injuries or blood stains at *labia majora* or *labia minora*, nor any injury is stated to have found on vagina. No evidence of any bleeding or tear of hymen is noted.

10 At this stage, learned APP has invited attention to further notings of medical report that evidence of sexual intercourse/assault cannot be ruled out. However, final opinion is pending till receipt of Forensic reports. Thus, to a specific query made to learned APP, on instructions from Investigating Officer, it is submitted that nothing is forwarded to Forensic Laboratory. In that view of the matter, above contents in the medical report are of no consequence.

11 On the contrary, on considering the history of assault given by applicant no.1 on his being examined in the Government hospital on 10th September 2015, it is specifically stated that he is wrongly framed in the case of rape involving three year old girl on 7th September 2016.

12 The learned trial Court while rejecting the application appears to have considered that though there is no mention of injuries to the prosecutrix, said aspect is to be taken into consideration at the time of trial, and it appears that no case was put forth on behalf of applicants with respect to their lodging report on the basis of which Crime No.444/15 came to be registered against the close relations of prosecutrix/complainant.

13 Having considering the facts as aforesaid, application is thus liable to be allowed by imposing conditions upon the applicant as per order below.

ORDER

- i) Applicants shall be released on bail on their executing PR bond in the sum of Rs.30,000/- each with one surety each in like amount.
- ii) Applicants shall not enter within the jurisdiction of Wadala T.T Police Station and shall mark their presence with Antop Hill Police Station on the first day of each month, pending trial.
- iii) Applicants shall not tamper with the witnesses or evidence, in any manner.

On their failure to comply with any of these conditions, prosecution shall move application for cancellation of bail.

(PN. DESHMUKH, J)