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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.635 OF 2016

Suresh Duryodhan Suryawanshi ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.P.K.Dhakephalkar, Senior Advocate with Mr.M.S.Mohite, Mr. Santosh Suryawanshi i/b. Mr.Santosh H.Chari for the applicant.

Ms.Vidya Kastle, Special PP with Mrs.R.M.Gadhvi, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 24TH JUNE, 2016

P.C. :-

1. By this application under section 439 of the Criminal Procedure Code the applicant / accused No.2 is seeking bail in Crime No.56/2015 registered initially with M.I.D.C. Police Station, Mumbai and subsequently transferred to DCB, C.I.D., Unit No.X, Mumbai for offences punishable under sections 120B 384, 388, 379, 376(2)(a)(i) (ii) (iii), 365, 366, 354A(1), 354A(2), 170, 341, 342, 347, 323, 324, 327,

509, 506(2), 201, 211, 414 read with 34 and 114 of the Indian Penal Code registered at the instance of the informant / prosecutrix.

2. According to the prosecution case, the applicant / accused along with colleague police officers and some private individuals have hatched conspiracy for abducting the prosecutrix for forcing her to subject herself to illicit intercourse and for extorting huge amounts from her as well as from her associate by putting her in fear of injury. According to the prosecution case, after wrongfully confining her, the prosecutrix was subjected to rape, apart from extorting money and valuables from her as well as her associate.

3. Briefly stated, according to the prosecution case, accused No.1 Khatape and present applicant / accused No.2 Suresh Suryawanshi, both Assistant Police Inspectors, attached to Saki Naka Police Station, Mumbai went to hotel Holiday Inn, Saki Naka, Mumbai in order to execute their plan of extorting money and valuables, apart from commission of rape on the prosecutrix as per conspiracy hatched by them.

They abducted the informant as well as her associate Kanwaldeep while they were returning from that hotel at about 1.00 a.m. of 3rd April, 2015. They were taken by Tata Safari vehicle to Saki Naka Police Station and at that place, the prosecutrix was forced to confess that she is indulging in prostitution. Accused persons, including the present applicant, as per the prosecution case, assured to help her by showing her as victim if she accepted the fact that she is indulging in prostitution.

4. It is further seen from the report lodged by the prosecutrix as well as from the charge-sheet that thereafter, she was taken to Police Outpost Sangharsh Nagar. Thereafter, she was sexually exploited by accused No.1 Khatape when other police personal present there left the outpost for about 10 to 15 minutes. As per version of the prosecutrix, thereafter also accused No.1 Khatape again attempted to molest her but because of sounds at the door of that police outpost, he could not do the act. According to the prosecution case, one lady who posed herself to be a Lady Police Constable took cash and valuables amounting to Rs.4.98 lacs from the purse of the prosecutrix. According to the informant / prosecutrix, in such

manner she was wrongfully confined at Police Outpost of Sangharsh Nagar from around 3.00 a.m. of 3rd April, 2015 to 9.55 a.m. of 3rd April, 2015. Thereafter, as per her report, one police personnel took her by auto-rickshaw to Saki Naka Police Station. At that time, she found that her purse was only containing an amount of Rs.1,500/-. At the police station, she was made to deposit an amount of Rs.1,200/- under the receipt and thereafter, she was allowed to go to her house.

5. So far as associate of the prosecutrix, namely Kanwaldeep is concerned, the record of investigation shows that his statement was also recorded by the Investigating Officer. According to Kanwaldeep, after intercepting them by persons posing as police, they were taken to Saki Naka Police Station. At that place, he was beaten by accused police officers. Accused alleged that he is a pimp of the prosecutrix, who is involved in the business of prostitution and threatened him that he will not be in a position to get himself released for the next three days as there is holiday to the Court. He was threatened that he will be involved in false cases. With these threatening, accused persons demanded an amount of Rs.7 lacs from him and ultimately that demand was settled at Rs.4

lacs. According to the prosecution case, Kanwaljit made frantic attempts to collect this amount in the night intervening 2nd April, 2015 and 3rd April, 2015 by making telephonic calls. Ultimately, his mother deposited an amount of Rs.4 lacs in account of Vinod Chatapal. Thereafter, that amount was paid to accused persons and in this way he was successful in securing his release in the afternoon on 3rd April, 2015.

6. Heard the learned senior counsel for appearing for the applicant. He argued that the role attributed to the present applicant in the crime in question is only that of putting Kanwaldeep in fear for extorting money from him. According to the learned senior counsel, so far as the present applicant is concerned, section 388 is not attracted. He further argued that evidence regarding recovery is not of any assistance as key of the cupboard was with one Dhakane - an employee of the police department. According to the learned senior counsel as there is no material to infer that the present applicant either abetted accused No.1 Khatape or actually raped the informant, there is no hurdle in granting bail to him on filing the charge-sheet. He further pointed out that three of the accused are already released on bail.

7. As against this, the learned Special Public Prosecutor argued that the entire incident is an example of pre-planned conspiracy hatched by accused persons, including the so called responsible police officers attached to Saki Naka Police Station. Statement of Vikas Pawar, Security Supervisor of the hotel Holiday Inn shows that the present applicant along with co-accused Khatape had been to the hotel where accused Mirza and Hashmi had booked a room. It is further argued that to execute the plan of committing extortion and sexual offence, after making necessary inquiry at the said hotel, accused persons abducted the informant and her associate Kanwaldeep and they were taken to Saki Naka Police Station. By pointing out the statement of P.Y.More, Senior Police Inspector of Saki Naka Police Station, it is argued that only Senior Police Inspector is empowered by the State to take action and investigate the offence of Immoral Traffic (Prevention) Act and this witness never instructed accused persons to take action in the night intervening 2nd April, 2015 and 3rd April, 2015. By pointing out statements of lady police constables Priyanka and Jyoti, it is argued by the learned Special PP that accused persons have even forged entries of

police record to show that these lady constables accompanied accused persons and show of action under section 110 of the Maharashtra Police Act was made against the informant. It is argued by the learned APP that statement of Suresh Kamble shows that the present applicant along with co-accused had brought the informant and her associate to Saki Naka Police Station and he saw the applicant with Kanwaldeep present in Saki Naka Police Station throughout the night. It is further argued that the role attributed to the present applicant is not only of receiving amount of extortion from Kanwaldeep but the present applicant is also involved in the sexual offence committed against the informant as he has abetted accused No.1 Khatape. It is argued that the applicant allowed accused No.1 Khatape to take the informant to Sangharsh Nagar Police Outpost when there was no provision at that police outpost to detain lady accused at that place. The applicant / accused and accused No.1 were in contact throughout that night and subsequently, the present applicant has also visited that outpost. Lastly, it is argued by the learned Special PP that though draft charge is filed before the Sessions Court in the month of April, 2015 as yet there is no progress of the trial. Accused persons have not engaged Advocate to represent

them and many of them have filed applications for discharge. As such, according to the learned Special PP, the trial has not yet commenced. It is further argued that there is also possibility of tampering the prosecution evidence as many persons are associated with the accused persons.

8. At this juncture, the learned senior counsel for the applicant submitted that the applicant had engaged an Advocate to represent him before the Sessions Court long back and the trial is not protracted at his instance. This statement is not disputed by the learned APP.

9. I have perused the entire charge-sheet with the assistance of the learned counsel for the parties. At this stage, it needs to be kept in mind that object of keeping a person in custody is to ensure his availability to face trial and to receive the sentence as may be ultimately passed after due trial. Pre-trial detention is not supposed to be punitive or preventive. It is well settled that seriousness of the allegations is not the only consideration while granting or denying bail, the delay in commencement and conclusion of trial is also a factor which needs to be kept in mind and a person accused of an offence

cannot be kept in custody for an indefinite period if the trial is not likely to conclude within a reasonable time. Valuable reference can be had to this proposition from the ruling of the Hon'ble Supreme Court in the case of ¹**Kalyan Chandrashekar Sarkar V/s. Rajesh Rajan**. In the case in hand, the learned Special PP herself stated that the trial has not yet commenced. Perusal of the charge-sheet goes to show that the prosecution has cited in all 122 witnesses for proving the charge. This factor is as such, an important factor while deciding the present application.

10. Now, let us examine the material against the present applicant. It is argued by the learned Special PP that the applicant has abetted the commission of rape on the prosecutrix by accused No.1 Khatape. It is well settled that abetment does not involve actual commission of the crime on the part of abettor. However, abetment involves complicity on the part of the abettor at a point of time prior to or at the time of the commission of the offence. Abetment is complete when another is instigated to commit an act or offence. Therefore, the prosecution is *prima facie* required to establish that there was some instigation, provocation, incitement or

¹ (2005) 2 SCC 42

encouragement by the applicant / accused to another accused for committing an act of offence. In other words, some active suggestion or stimulation by the abettor is required to be established. Without knowledge and intention, abetment cannot be inferred.

11. Be that as it may, consistent version of the informant and her associate Kanwaldeep shows that after intercepting them, they were taken to Saki Naka Police Station where accused persons intimidated them and threatened them that they both will be involved in false cases under the Immoral Traffic (Prevention) Act. In other words, they were threatened that they would be implicated in cases of prostitution. Perusal of the statement of the informant becomes relevant in order to infer whether the present applicant / accused had abetted the commission of rape on the informant by accused No.1 Khatape. The F.I.R. shows that the informant had stated that after insisting her to admit that she was indulging in prostitution, she was thereafter taken by accused No.1 Khatape to Sangharsh Nagar police outpost. Perusal of the charge-sheet reveals that the informant and her associate were kept in different rooms at Saki Naka Police

Station. It is seen that after taking the informant to police outpost at about 3.00 a.m. of 3rd April, 2015, accused No.1 Khatape had committed rape on her when two male police constables and one lady police constable present there left that police outpost to return within 10 to 15 minutes. The statement of the informant nowhere shows that there was any instigation, provocation, incitement or encouragement by the applicant to accused No.1 Khatape to commit rape on her.

12. The role of the present applicant in the alleged in the crime in question is reflected from the statement of Kanwaldeep recorded under section 161 of the Criminal Procedure Code. It is also reflected from the statement of Suresh Kamble as pointed out by the learned Special PP. Record of investigation shows that the present applicant was throughout present in Saki Naka Police Station in the night hours of 3rd April, 2015 along with Kanwaldeep. It is seen that the present applicant and the co-accused had extorted amount of Rs.4 lacs from Kanwaldeep by putting him to fear that false cases will be registered against him and he will be arrested. In order to save himself from defamation, as per statement of Kanwaldeep, he paid the amount of Rs.4 lacs to

the accused persons by making it available from his mother. It is also seen that one of the accused person had also taken an amount of Rs.35,000/- from Kanwaldeep which was handed over to Kanwaldeep by his friend Shashi Kumar Singh.

13. So far as visit of this applicant / accused to Sangharsh Nagar police outpost is concerned, it is seen that after the prosecutrix left for her house, this applicant had visited the police outpost at 12.00 noon on 3rd April, 2015. No element of abement is reflected by that visit.

14. Statements of police constables Priyanka and Jyoti do state that they were shown to be members of police team which took action under section 110 of the Maharashtra Police Act against the prosecutrix, though they were in fact not there.

15. As against the version of Kanwaldeep before the police which is noted earlier what he stated in his statement under section 164 of the Criminal Procedure Code recorded by the learned Metropolitan Magistrate is worth noting. His statement came to be recorded at the instance of the

Investigating Officer by the learned 28th Metropolitan Magistrate on 2nd June, 2015. One may presume that Kanwaldeep had enough time for due deliberations as this statement was recorded after sufficient period of time. Perusal of his statement reveals that he has disclosed to the learned Metropolitan Magistrate that for demanding ransom, police constable named Ponde had taken him to a room adjoining to the cabin of the applicant. Statement of Kanwaldeep further reveals that at that place accused Ponde informed him that for settling the entire matter, he will have to pay an amount of Rs.7 lacs and thereafter, the deal was settled at Rs.4 lacs. Presence of the present applicant there is not vouched by Kamaldeep. Statement of Kanwaldeep recorded under section 164 of the Criminal Procedure Code *prima facie*, does not attribute any role to the present applicant directly in extorting amount from Kanwaldeep. Kanwaldeep further disclosed to the Metropolitan Magistrate that it was accused Ponde who had taken the amount of Rs.35,000/- from him. Be that as it may, all these aspects will be examined at the time of trial.

16. During investigation, an amount of Rs.80,000/- was

also recovered from the present applicant. This recovery is from the iron cupboard situated in the Crime Detection Room of Saki Naka Police Station. The key of that iron cupboard was with police constable named Dhakane. After obtaining the key from Dhakane, that cupboard was opened. The key of the safe of the cupboard was in another wooden cupboard. After taking key from another cupboard, the safe was opened to find an amount of Rs.80,000/-. This aspect will also be required to be appreciated after examining witnesses in order to decide its relevancy under section 27 of the Evidence Act.

17. During the investigation, identification parade was also held in which the applicant / accused is identified by the witnesses.

18. Taking overall review of the evidence against the applicant / accused, *prima facie* it is not seen that he had abetted the commission of rape on the prosecutrix. This act seems to be an independent act by accused Khatape. Though role of extracting amount is attributed to this applicant, in his statement under section 164 of the Criminal Procedure Code, Kanwaldeep dilutes the role of this applicant. There is no

possibility of starting the trial in the near future. The delay is not attributable to the act of the present applicant / accused. No material to substantiate the averment of possibility of tampering the prosecution evidence by the present applicant if enlarged on bail is forthcoming, except the oral submission of the learned Special PP. Hence, considering the allegation against the present applicant, his incarceration in jail for indefinite period is not warranted. Therefore, the order:-

- (i) The applicant / accused in Crime No.56/2015 registered initially with M.I.D.C. Police Station, Mumbai and subsequently transferred to DCB, C.I.D., Unit No.X, Mumbai for offences punishable under sections 120B, 384, 388, 379, 376(2)(a)(i) (ii) (iii), 365, 366, 354A(1), 354A(2), 170, 341, 342, 347, 323, 324, 327, 509, 506(2), 201, 211, 414 read with 34 and 114 of the Indian Penal Code be released on bail on his executing P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;
- (ii) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person

acquainted with the facts of accusation against applicant so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;

- (iii) The applicant / accused shall attend each and every date of hearing before the Sessions Court and he shall not protract the trial in any manner and shall co-operate in expeditious disposal of the trial;
- (iv) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of the commission;
- (v) The application is disposed of accordingly.

(A.M.BADAR, J.)