

*Ladda*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 810 of 2015
WITH
CRIMINAL APPLICATION No. 949 of 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Siddhartha P. Munghate for the applicant.
Ms P.P. Shinde, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.
DATE : 05th January, 2016

P.C.

- 1) The applicant is seeking bail in CR No. I-36/2016 registered with Vashi Police Station, Navi Mumbai under section 376 (d) of the IPC.
- 2) The complainant/first informant is a middle aged lady and is working as a cook with her employer at Navi Mumbai. It is the specific case of the complainant that she knew the applicant and the other co-accused, namely Raju Pal. That on 19.1.2015 in the night at about 9:30 p.m. the applicant called the complainant for a party. The said fact was informed by the complainant to her employer and thereafter she went to join the applicant for said party. After the complainant went to the applicant, accused no.2 Raju Pal was also present. The accused persons offered her a glass of cold-drink.

Thereafter, the complainant felt giddiness. Accused no.2 Raju Pal make her to fall on the ground. When the prosecutrix opposed it, the applicant herein caught hold of her and the accused persons committed rape on her. The accused persons thereafter fled from the spot. As the complainant was under influence of stupefying substance, she was unable to get up immediately and after some time she came down from the building. At about 12:30 a.m. she noticed a police van which was on patrolling duty. She informed her ordeal to the police. The police thereafter admitted her to the hospital. The complainant in the premise lodged the F.I.R.

3) The learned counsel for the applicant submitted that the complainant has filed an affidavit dated 7/2/2015 before the learned Sessions Judge, Thane at the time of hearing of the bail application preferred by the applicant bearing Bail Application No. 259/2015. In the said affidavit she has exonerated the applicant and stated that the complaint is filed out of misunderstanding. The learned trial Court in paragraph no.6 of the impugned order dated 7.2.2015 while dealing with the said affidavit dated 7.2.2015, has observed as under :

“Today the informant-victim lady is present in the Court and her alleged affidavit is placed on record. On asking the victim about the same, she denied to know the contents of affidavit which were written in English. Thus, it appears that the attempt of tampering the witness had been made on behalf of the accused persons. Thus, this is an additional ground for consideration for denying bail to the accused.”

4) It is the settled position of law as has been enumerated by the Supreme Court in **AIR 2004 SC 4044** that a victim in the case of sexual assault is not an accomplice to the crime. In the instant case, prima facie, I am of the opinion that the statement of the complainant is not only reliable but trustworthy too. The applicant is involved in a serious and heinous crime. The earlier attempt made by the applicant of tampering with the prosecution witnesses shows the potentiality of the applicant in tampering with the evidence.

5) The learned APP submitted that if the applicant is released on bail, there is every possibility that the applicant may cause harm to the prosecutrix. I find substance in the said submission.

6) In view of the above, I find that the applicant has failed to make out any case for his release on bail. The application is accordingly dismissed.

7) Criminal Application No. 949 of 2015 for amendment does not survive and same is also dismissed.

(A.S. GADKARI, J.)