

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1480 OF 2016**

Akshay Ishwar Karande

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Aniket Nikam for the Applicant

Mr. V. V. Gangurde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 28th NOVEMBER, 2016

P.C. :

1. Heard learned Counsel for the parties.
2. This is the second bail application preferred by the applicant. The first application being Bail Application No. 672 of 2016 was dismissed as withdrawn. It was observed in the said order as under :

“. After arguing for some time, learned counsel for the Applicants seeks leave to withdraw this Application.

2. Accordingly, the Bail Application is dismissed as withdrawn.”
3. Learned Counsel for the applicant states that the applicant is aged 19 years, whereas, the prosecutrix was about 23 years old at the

relevant time. He submits that the act of sexual intercourse, if any, was a consensual act. He further submits that the incident, as evident from the history given to the doctor, reveals that the alleged sexual assault had taken place seven months prior to the lodging of the FIR. He further submits that the applicant is in custody since 30th October, 2015 and till date, the trial has not commenced.

4. Learned A.P.P opposes the application. He submits that it is a case of repeated sexual assault by the applicant and two other co-accused on the prosecutrix. He submitted that the accused including the applicant are from same village and states that despite the accused being in custody, the relatives of the accused are threatening the prosecutrix and her family. He states that after the applicant and other accused were arrested, the husband of the prosecutrix was threatened that there would be bloodshed, after the accused were released. He states that a letter to that effect has been sent by the prosecutrix's lawyer to the Inspector of Police of the concerned Police Station.

5. Perused the charge-sheet, in particular, the statement of the

prosecutrix. The prosecutrix is a married lady aged 23 years living with her husband, children and other family members. She has alleged that the applicant and co-accused repeatedly visited her, threatened her and committed sexual intercourse with her on several occasions. She has stated that all the accused including the applicant had threatened her with dire consequences, if she disclosed the said incident. She has stated that taking advantage of the fact that she was alone at home, the said acts were committed by the accused and others. She has stated that considering that she would be defamed, she did not disclose the incident. She has further stated that when it became impossible to tolerate the said acts, she disclosed the same to her husband, pursuant to which, the complaint was lodged. Nothing has been brought on record by the applicant to show that there was any animosity between the accused including the applicant on the one hand and the prosecutrix and her family members on the other hand, to show that the applicant has been falsely implicated in the said case. It also appears that the applicant is from the same village. It also appears that after the registration of the FIR, the relatives of the accused threatened the prosecutrix/prosecutrix's husband, before the charge-sheet was filed, pursuant to which, a letter was addressed by the complainant's Advocate to

the Inspector of Police of the concerned Police Station.

6. A perusal of the statement of the prosecutrix shows that for about a period of 1½ years, taking advantage of the fact that the prosecutrix was alone at home, the applicant and other co-accused repeatedly sexually assaulted her. *Prima facie*, there is nothing on record to show that there was any animosity between the applicant and the prosecutrix, for the prosecutrix to falsely implicate him. In the facts of the peculiar case, merely because there is some delay in lodging the FIR, the same cannot be said to be fatal. It is only when the prosecutrix was unable to deal with the threats and acts of the accused, that she disclosed the same to her husband, pursuant to which, the complaint was promptly lodged.

7. The medical report shows that the history given by the prosecutrix is as under:

“Repeated sexual assault by three persons on and off since last 1½ year in front of her home without her consent.”

Merely because there are no injuries on her person, it cannot be inferred that it was an act of consent.

8. Neither the learned Counsel for the applicant nor the APP have been able to state, the exact stage of the trial in the trial Court.

9. Considering the material on record, it is not a fit case to enlarge the applicant on bail. The application is accordingly rejected. The trial is, however, expedited.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.