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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1091 OF 2015

Anil Hardasmal Kamra @ Mukhi & Anr.	..	..Applicants.
Vs.		
The State of Maharashtra	..	..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1039 OF 2015

Naresh Sajandas Rohra	..	..Applicant.
Vs.		
The State of Maharashtra	..	..Respondent

Mr. R.D. Suryawanshi for applicant in ABA-1091/2015.
Ms. P.P. Shinde, APP for State.
Mr. S.D. Butala for Complainant.

CORAM: A.S. GADKARI, J.

DATE : 25th February 2016.

P.C.

1 The applicants are apprehending arrest in CR No.204 of 2015 dated 2.7.2015 registered with Hill Line Police Station, Ulhasnagar, District-Thane under Section 376(2)(N), 376(C)(D), 506(2), 120-B read with Section 34 of IPC.

2 The complainant Smt. Pinky Ravikumar Bhatiya has lodged

the FIR dated 2.7.2015. It is stated in the said FIR that she was doing business of Tupperware articles. That in the month of February or March 2013, the applicant Anil Mukhi contacted her on her mobile phone and called her to his shop in the evening at about 4.00 p.m. At that time the co-accused Manoj Rajani was also present. After some time the applicant offered tea to the complainant. When the complainant raised suspicion about the taste of the tea, the applicant Anil Mukhi told her that it is something different tea and once the complainant tastes it, she will demand it again and again. After drinking the said tea, the complainant got fainted. In the evening about 7.30 p.m. when the complainant awoken from slumber, she noticed that her clothes were not in order. As the complainant was not feeling well, the applicant Anil Mukhi called for auto-rickshaw and directed the complainant to go to her house. After reaching her house, the complainant had suspicion, that she was ravished. After few days the applicant-Anil Mukhi again called complainant to his shop. At that time, the applicant Naresh Rohra was also present. The complainant tried to return from the said place after noticing other accused persons there. The applicant Anil Mukhi thereafter started his laptop and showed her video recording of the physical relations which he did with her on the earlier occasion. The applicant Anil thereafter threatened the complainant that

unless and until the complainant submits to their demands, the said video clipping will be circulated to others. Both the applicants further threatened her that if she refuses to submit to their demands, the said blue-film which was recorded by the applicant Anil Mukhi will be circulated on WhatsApp and other social networking sites and the complainant will be defamed permanently. The complainant has categorically stated that subsequent thereto the applicants herein have exploited her sexually. Being fed up with the atrocities committed by the applicants, the complainant was left with no other option, she gathered courage and lodged the FIR with the police. There are in all four accused persons in the present crime. As far as the accused Latish Sukheja and Manoj Rajani are concerned, after completion of investigation the chargesheet as against them has been filed by the police.

3 Heard the learned Counsel for the applicants and the learned APP and with their able assistance, I have also perused the entire record annexed to the Applications and the documents of investigation.

4 The learned Counsel for the applicants submitted that there is a delay of 28 months in lodging the FIR and the complainant did not lodge or made protest of the said act immediately after its commission. He further submitted that the complainant from 8.3.2013 on various occasions had

been to the police station, but did not lodge the complaint with the police. He further submitted that the applicant was arrested in a crime lodged by her neighbour on 13.3.2013 by the police and at that time also the complainant did not make any grievance with the police. He submitted that the present complaint is lodged at the behest of Senior Police Inspector Shri Dhopawkar then attached to Hill Line Police station, Ulhasnagar, District-thane. He submitted that the co-accused in the present case namely Latish Shukheja had filed a complaint against the said Senior Police Inspector about an offence under Section 376 and 120-B of IPC. On the basis of the complaint lodged by the said co-accused, action was initiated against the said Senior Police Inspector and as counter blast to the said complaint the present crime is registered at his behest against the applicants herein. He further submitted that the police have already taken search of the office of the applicant Anil Mukhi and have seized CPU and hard-disk of his computer from the said spot. He lastly contended that for the said reasons, the custodial interrogation of the applicant is not necessary. He prayed that the applicants may be granted pre-arrest bail.

The learned APP vehemently opposed the application and submitted that the custodial interrogation of the applicants is very much necessary to unearth the entire truth behind the crime. The learned APP has

also filed a detailed affidavit of Shri J.U. Jadhav, Deputy Commissioner of Police, Ulhasnagar dated 11.12.2015 opposing the present applications.

5 At this stage, a useful reference can be made to two decisions of the Supreme Court namely (i) AIR 1983 SC 753 in the case of *Bharwada B. Hirjibhai Vs. State of Gujarat* and (ii) (2004) 8 SCC 153 in the case of *State of H.P. Vs. Shree Kant Shekari*.

 In the case of *Bharwada B. Hirjibhai (supra)*, the Supreme Court has held as under:

“A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the

victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

In the case of State of H.P. Vs. Shree Kant Shekari (supra) the Supreme Court in paragraph Nos.18 and 21 has held as under:-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or

vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle. These aspects were highlighted in [Tulshidas Kanolkar v. State of Goa.](#)”

21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.”

6 After taking into consideration the ratio laid down by the Supreme Court in the aforesaid decisions, the contention raised by the

learned Counsel for the applicant about delay in lodging the FIR, according to me does not hold any substance in it. It appears from the FIR that the complainant has properly explained the delay in lodging the present FIR. It is to be noted here that the complainant after being fed up by sexual advances and exploitation at the hands of the applicants herein ultimately gathered courage and has lodged the FIR. That her going to the police station in the intervening period and not lodging the FIR therefore does not make any difference while taking into consideration the contents of FIR herein. The complainant in her FIR has categorically stated that the applicant-Anil called her to his place and after giving her tea (which was spiked with stupefying substance) when the complainant became unconscious, committed rape on her. She has specifically stated that subsequent thereto the applicants herein called the complainant to the shop of applicant-Anil and showed her the video clipping of the earlier incident. The complainant has further categorically stated that by threatening the complainant of circulating the said blue-film on social media, the applicants herein along with other co-accused persons have sexually exploited the complainant for a considerable period.

7 The learned Counsel for the applicant would then contend that the complainant had filed an affidavit in Criminal Application No.729 of

2015 thereby admitting the fact that the present FIR was lodged by the complainant under the directions of the said Senior Police Inspector then attached to Hill Line Police Station, Ulhasnagar. I have perused the said affidavit dated 11.9.2015 and find that there is no such averment in the said affidavit. It appears that the applicants want this Court to infer about the said contention without there being admission in that behalf.

It is to be noted here that the mobile phones which were used by the applicants herein are not yet seized and/or recovered by the police in the present crime. The prosecution has expressed an apprehension that, there is every possibility that, by using the said mobile phones, the messages/clippings might have been sent to other persons by the applicants.

8 After taking into consideration the material available on record, the serious allegations against the applicants and the gravity of the offence, I am of the opinion that this is not a fit case to grant pre-arrest bail to the applicants. In view of the same, both the applications are accordingly dismissed.

(A.S. GADKARI, J.)