

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1746 OF 2016

Shri Sanjay Mohanlal Dube	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

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Mr. A.P.Mundargi, Senior Advocate i/by Mr. Jayant Bardeskar Advocates for the Applicant.

Mr. Deepak Thakur, APP for the Respondent/State.

Mr. P.R.Varma, Intervenor.

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CORAM : N.W.SAMBRE, J.

DATED : 24th NOVEMBER, 2016.

P.C.

1 The applicant is seeking pre-arrest bail in Crime No. 107 of 2016 registered against the accused for the offences punishable under Sections 376, 452, 323, 504 and 506 of IPC for an alleged incident which took place between May 20, 2016 and August 6, 2016.

2 The prosecution case against the present applicant is that the victim Sharda, who was separated from her husband alleged to have claimed that the present applicant on May 20, 2016 after making a phone call on mobile had been to her place and committed sexual offence. It is further claimed that the applicant thereafter on August 6, 2016 also committed similar type of offence resulting in lodging of FIR.

3 While trying to make out case for grant of bail, the learned counsel for the applicant submits that the applicant is falsely implicated in the crime at the behest of one Bhola Tiwari who has business rivalry with the applicant. He then submits that there were no phone calls as could be verified from CDR details of 20.5.2016 as has been claimed in the FIR between the applicant and the complainant. As per the victim's narration, incident has taken place at her place where she resides in thickly populated building. The offence as has been claimed is simply impossible to be committed at such a place. He then urges that there is substantial improvement made by the complainant while objecting pre-arrest bail application of the applicant before the learned Sessions Judge as she has come out with a new story of gang rape.

4 The learned APP while opposing the bail application on the basis of the statements of the victim recorded under Section 164 of the IPC also invited my attention to the statement of Shalini Menon, member of the Dakshata Committee. The learned APP urges that custodial interrogation is necessary in the background of criminal history of the present applicant.

5 Having considered rival submissions, it is required to be noted that the applicant is shown to be of the age of 55 years and is a businessman . It is specifically claimed in the FIR that on the date of alleged crime i.e. on 20.5.2016, the applicant called the complainant and then visited at her place. The CDR report of 20.5.2016 does not reflect any such phone call. Apart from above, perusal of the objection raised by the complainant before the Sessions Judge while objecting

application for pre-arrest bail of the applicant has made substantial improvement and has come out with altogether new story of gang rape which is also vague.

6 It is not in dispute that place of incident of rape is a chawl where number of families are residing and is very thickly populated. The claim of the complainant that it is upon threats of the applicant that she has not reported the matter. However, she could rather gain courage only after a stranger girl has supported her claim which prima-facie appears to be unbelievable.

7 The false implication in the above referred background cannot be ruled out. In view thereof, the application needs to be allowed. Hence, the following order:

(1) In the event of arrest, the Applicant shall be released on executing PR.Bond of Rs.50,000/- with one or two sureties in the like amount.

(2) Applicant to appear before the Investigating Officer on 30th November, 1st, 2nd and 3rd December , 2016 from 10 a.m. onwards after giving medical samples for carrying out other medical examinations of the applicant. He shall thereafter attend the Investigating Officer as and when called.

(3) He shall co-operate with the Investigation in the matter.

(4) The Applicant shall not tamper with the prosecution evidence and/or shall not influence the prosecution witnesses.

(5) He shall not make any call to the complainant or visit the place of her residence.

8 Application stands allowed in the above terms.

(N.W.SAMBRE, J.)