

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2454 OF 2015

Vijay Rajendra Yadav

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Victor Chettiar for Applicant
Ms. Savina R. Crasto for complainant
Mr. S. S. Pednekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 2, 2016.

PC :

Heard respective counsel and parties. Prosecutrix along with her mother is present in the court. Original complainant has filed an affidavit in the court. Affidavit is taken on record and marked as article 'X' for the purpose of identification.

2) This is an application under section 439 of Code of Criminal Procedure, 1973. The applicant herein is charge-sheeted for offence punishable under section 376, 313 r/w 34 of Indian Penal Code and is in custody in crime no. 52 of 2015 registered at Amboli Police Station since 12/02/2015. The earlier

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application seeking bail was rejected by this Court (Coram: Smt. Sadhana S. Jadhav, J.) on merits of the case vide order dated 08/07/2015.

3) The learned counsel submits that subsequent application is filed on the ground that on earlier occasion, in the course of advancing argument, his blood pressure had shot up and therefore, could not highlight certain discrepancies in the charge-sheet. In any case, subsequently the prosecutrix wanted to withdraw the allegations, as even according to her she had filed false complaint against the applicant.

4) This Court by an order dated 19/01/2016 issued notice to mother of prosecutrix namely Bhimabai Hulli as to why she should not be prosecuted for offence punishable under section 192 and 195 of Indian Penal Code as the punishment contemplated for offence punishable under section 376 of Indian Penal Code is not less than 7 years. Today, mother of prosecutrix has stated as follows:

“I say that my intention to complain against accused was to get back the balance amount which the accused had taken from my daughter. I say that I being illiterate was not aware of the consequences of the F.I.R. lodged by the police. I say that after F.I.R. was lodged, accused's mother has returned the balance

amount payable to me by the accused. I say that in the year December 2015, we learnt that accused is still behind bars. I made enquiries from a police constable to take back the complaint lodged against accused Vijay Rajendra Yadav. I say that police instructed me to meet an Advocate and to appear in this Hon'ble Court and make a statement by way of an affidavit narrating the true facts of the alleged incident.”

5) It is submitted by the learned counsel appearing for the original complainant that in fact, prosecutrix was fully aware that applicant was a married man. She was in love with him. She had consensual sex. She had consented to undergo abortion. It appears from the records that the mother was fully aware of the relationship of her daughter with the applicant who was a married man. Mother had learnt that her daughter had given him Rs. 1,70,000/- which she had kept as savings. Today, upon enquiry with the mother, it is stated in the court that she lives in a small house. She had kept the money in the house which was stolen by her daughter and was given to the applicant. It is also submitted on affidavit that after confronting the accused with his deeds he had returned Rs. 30,000/- by cheque dated 30/01/2015 and Rs. 30,000/-

by cheque dated 02/02/2015. The said cheques were honoured. Accused/applicant had assured to pay the remaining amount after 10 days which he failed, in spite of several reminders and therefore, the mother and daughter had approached the police station and narrated the incident to the police.

6) It is pertinent to note that the mother has filed an affidavit saying that there was tremendous pressure on her from the family members and in order to teach a lesson to the accused person, she had accompanied her daughter to the police station on 12/02/2015 and lodged a report at the police station on the basis of which applicant is being prosecuted for offence punishable under section 376 of Indian Penal Code. The minimum punishment prescribed for offence punishable under section 376 of Indian Penal Code is not less than 7 years. It is apparent on the face of the record that prosecutrix and her mother have filed a false complaint against applicant and therefore, this court was constrained to issue notice to prosecutrix and her mother as to why they should not be prosecuted for offence punishable under section 192 and 195 of Indian Penal Code. Mother of prosecutrix has

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apologized before the court. She submits that she has realized her mistake. It is extremely unfortunate that a person had to remain behind the bars for almost one year for being falsely prosecuted for a serious offence like 376 of Indian Penal Code.

7) Learned APP has vehemently opposed the grant of pardon to the prosecutrix and her mother. Learned APP rightly submits that in case State police had by mistake detained any person behind bars for more than 24 hours, State would have to pay heavy compensation, however, in the present case, applicant was deprived of his liberty for more than one year only because prosecutrix and her mother had filed false complaint. They have the courage and audacity to tell this Court that it was a false complaint and that they wish that the applicant should be enlarged on bail.

8) In reply it is further submitted by the mother that the court shall forgive them for taking such step. It is submitted that the mother of prosecutrix is illiterate and mother and daughter did not realize the consequences of filing a false F.I.R.

9) Needless to say at this stage, the merits of the matter need not be

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gone into since the prosecutrix herself admits before the court that she was not ravished by the applicant against her wish. It is clear that it was consensual sex and that she had consented for abortion.

10) In view of the above observations, applicant deserves to be enlarged on bail. Hence, following order.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail in crime no. 52 of 2015 registered at Amboli Police Station on furnishing P.R. bond in the sum of Rs. 25,000/- and one or two solvent sureties in the like amount.
- (iii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)