

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 119 OF 2017

Mr. Sumit Mittal,
32 years of age,
Businessman,
Resident of B 902,
Navpad Apartment,
Near SBI Bank,
Citylight road,
Surat City,
SVR Collegem,
Surat, Gujarat
Presently in
Judicial Custody at
Central Jail Colvale.

..... Applicant

V e r s u s

1. Police Inspector,
Anjuna Police Station,
Anjuna.
2. STATE
Through PP,
High Court of Bombay at Panaji,
Goa.

..... Respondents

Mr. S. G. Desai, Senior Advocate with Mr. S. G. Bhobe and Mr. Pavithran AV,
Advocates for the Applicant.

Mr. Pravin Faldessai, Addl. Public Prosecutor for the Respondents.

Coram :- **M. S. SONAK, J**

Date : **11th May, 2017**

ORAL ORDER

Heard Mr. S. G. Desai, learned Senior Advocate appearing for the
Applicant and Mr. Pravin Faldessai, learned Addl. Public Prosecutor appearing for

the Respondents.

2. The Applicant has been accused of commission of offences punishable under Section 323 and 376 of the Indian Penal Code. The allegation is that on 06.11.2016 at about 17.30 hours, the applicant entered the room of the Villa where his sister-in-law was sleeping, assaulted her by punching her on the stomach and the face and further had forcible sexual intercourse with her and thereafter fled from the window. The Applicant was arrested on 06.11.2016 itself and remains in custody from the said date. The chargesheet was filed in the matter on 03.02.2017 which indicates that the investigation is complete and in that sense, therefore, the Applicant is not required to be kept in custody. The learned Sessions Judge by Order dated 12.04.2017, has denied bail to the Applicant mainly emphasising that the offence alleged against the Applicant is serious in nature and further since the victim is a lady, the possibility of the Applicant threatening her if bail is granted, cannot be ruled out. The learned Sessions Judge has also observed that there is possibility of the Applicant jumping bail.

3. In this case, the material on record prima facie, indicates that on the date of the incident, the victim along with the Applicant's wife and other ladies had gone shopping. However, the victim returned to the Village in the afternoon stating that she was feeling unwell. The Applicant's wife, in her statement, has said that the Applicant and the victim, who is the wife's sister, were having extra marital affair since last two to three years or thereabout. There is also material on record which, prima facie, indicates sexual encounter on 06.11.2016. Prima facie, even the medical evidence on record supports such incident of sexual encounter.

4. The offence alleged is no doubt serious offence. The seriousness of the offence is undoubtedly the one of the considerations which is required to be addressed in the matter of grant or refusal of bail. However, it is not the only consideration.

5. In this case, there is no material to hold that the Applicant has no roots in the Society or that if the Applicant is released on bail, there is possibility of his fleeing from justice. The learned Addl. Public Prosecutor has submitted that this is a matter between the family members and it is possible that the Applicant will threaten the witnesses. There is a observation to this effect made by the learned Sessions Judge as well. However, there is really no material as such to suggest that the possibility of tampering with witnesses or evidence is of a extremely high degree in the facts and circumstances of the present case. The victim resides in Delhi and the Applicant is from Surat, Gujarat. Suitable conditions can always be imposed in case the Applicant is to be enlarged on bail. The apprehension that the Applicant is likely to jump bail also does not appear to be any real apprehension and, in any case, suitable conditions can always be imposed in this regard as well. The circumstance that the Applicant is already in custody since 06.11.2016 and further chargesheet has already been filed in the matter, are not irrelevant considerations in the facts of this case.

6. The Hon'ble Supreme Court in the case of **Sanjay Chandra vs. CBI (2012) 1 SCC 40**, has held that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is

neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. The detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test.

7. The State in its 'say' opposing the bail application, has contended that if the Applicant is granted bail, it will send a wrong message to the public and that will be not deterrent to persons who are indulging to these type of crimes especially against women.

8. In **Sanjay Chandra** (Supra), the Hon'ble Supreme Court has held that apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. In such matters, therefore, bail cannot be declined merely in order to send a message as contended by the State in its reply opposing the application for bail. Crucial test is "necessity" to detain the Applicant in custody pending the trial. The crucial test is also to assess whether the Applicant, if

enlarged on bail, is likely to flee from justice or to tamper with the witnesses/evidence. Seriousness of the offence is also undoubtedly one of the considerations, but, as noted above, the same is not the sole consideration.

9. Again, in **Sanjay Chandra**(Supra), the Hon'ble Apex Court held that the nature of the charge may be relevant, and at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. In determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The discretion is, to a large extent, regulated to the facts and circumstances of each particular case. At the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. In **Sanjay Chandra** (Supra), the Hon'ble Supreme Court has held that when the under trial accused are detained in custody for an indefinite period, Article 21 of the Constitution is violated. In paragraph 19, the Hon'ble Supreme Court has also made reference to the stage at which bail application is made and in that context has made distinction between the pre-charge and post-charge stages.

10. Upon consideration of the record, the prima facie facts and

circumstances, the provision in law as well as the submissions made by the learned Addl. Public Prosecutor, I am satisfied that the Application in the present case is required to be enlarged on bail subject to terms and conditions.

11. In the case of ***Shiney Suraj Ahuja vs. State of Maharashtra*** reported in ***(Manupatra) 2011 ALL MR (Cri) 92***, the learned Single Judge of this Court upon taking cognizance of the circumstances that investigation in the matter had already concluded, chargesheet had been filed and the Applicant was in custody three and half months, enlarged the Applicant on bail. The contention as regards the possibility of the Applicant's flight from justice or tampering with evidence were addressed by imposition of suitable conditions on the Applicant.

12. Accordingly, this application is disposed of with the following order :

(a) The Applicant shall be enlarged on bail on executing a personal bond in a sum of Rs.1,00,000/- with two sureties in the like amount to the satisfaction of the learned Trial Judge.

(b) The Applicant shall not leave India without prior permission of the Court and if the Applicant possesses a Passport, he shall deposit the same with the Trial Court.

(c) The Applicant shall not travel to Delhi or make

any attempt to establish contact with the victim in any manner.

(d) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted to the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority or tamper with evidence.

(e) The Applicant shall remain present before the Trial Court on the dates fixed for the hearing of the case without fail.

(f) The Applicant shall furnish his correct address to the Trial Court further in case there is any proposal to change such address and intimate necessary changes to the Trial Court.

(g) All concerned to act on an authenticated copy of this Order.

M. S. SONAK J.

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