

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 74 OF 2017

Deepak Ravji Shah & anr.

...Applicants

Versus

The State of Maharashtra

...Respondent

Mr. M. S. Mohite i/b. Mr. S. R. Phanse for the applicant.
Mr. H. Pethe, APP for the respondent-State.
PSI C. N. Khuspe, Vitthalwadi Police Station present.

CORAM : PRAKASH D. NAIK, J.
DATE : 3 JULY 2017

P.C. :

1. This is an application for anticipatory bail in connection with C.R. No.I-363 of 2016 read with Vitthalwadi Police Station, Thane for the offences punishable under sections 376(d), 342, 506(2) read with 34 of IPC.

2. The prosecution case is that the FIR was lodged by Smt. Kalpana Gaikwad. It is alleged that one Madan Pagare, the cousin of the complainant had assisted her for getting job of maid servant at

the house of applicants. Thereafter, she started working in the said house. On 19th June, 2016, the complainant noticed that the wife of applicant no.1 and accused Nikunj Raval were in one of the room of house and were getting intimate. The complainant informed the said fact to mother of applicant no.2. Applicant no.1 is married to sister of applicant no.2. On disclosing the above incident the mother of applicant no.2 was annoyed. The complainant was assaulted. Applicant no.1 also came there. The complainant was assaulted by mother of applicant no.2, Sangita and Nikunj. She was locked in the room and applicant no.1 and Nikunj Raval were sent to the said room and they had forcefully committed sexual intercourse with her. They also threatened the complainant that she will be killed. She was confined in the room till 10.00 pm. Applicant no.2 brought her out of room, he tried to speak sweetly with her and dropped her at home on motorcycle. Her brother and sister in law were not in the house. At that time, applicant no.2 had intercourse with her by using force. He also threatened her. The complainant has narrated the said incident to her brother and sister in law. Her brother told her to ignore the incident as accused are advocates. Thereafter, applicant no.2 and Satish More used to threaten her. She informed the incident to Madan Pagare who installed CCTV Camera in the home.

On 18th December, 2016 Satish @ Ganesh More visited the house of complainant. He was armed with knife. He threatened her of murder. He had intercourse with her without her consent by using force. She produced the CCTV footage.

3. The FIR was lodged on 27th December, 2016.

4. Learned advocate for the applicants submitted that the applicants are respectable citizens and practicing advocates. They have been falsely implicated at the instance of one Mohan Pagare. It is submitted the complainant has referred to one Mohan Pagare as cousin of the complainant. Learned advocate submitted that Madan Pagare and Mohan Pagare is one and the same person. The said fact is verified by the investigating authority. Learned APP on instruction from investigating authority submitted that Mohan Pagare and Madan Pagare is one and the same person. The complaint was lodged against him by co-accused Nikunj Raval. Madan Pagare was working as bailiff in the Court. At the instance of accused no.3 he was apprehended in trap case registered vide C.R. No.II-40/2016 on 19th September, 2016. The complainant had alleged that first incident had occurred on 19th September, 2016. The FIR was lodged on 27th December, 2016. It is submitted that applicant no.2 wanted to

contest election at the relevant time and therefore on account of political rivalry false case is registered against the applicant. It is submitted that Madan Pagare is closely associated with Arun Ashan against whom applicant no.2 and accused no.5 had filed complaint. He further submitted that CCTV footages were recorded by the investigating machinery in the camera which were installed at the house of the complainant. He submitted that the prosecution has not put up any evidence qua the said CCTV footages corroborating the version of the complainant. Learned APP pointed out that the allegations made in the FIR. He submitted that the complainant has lodged the FIR alleging the offence punishable under sections 376 of IPC. He further submitted that investigation is in progress.

5. The original complainant was represented by the advocate when the application was listed for hearing on 15 February, 2017. In order dated 15 February, 2017 it is recorded that the said advocate has instructions to intervene in the present application to oppose the grant of anticipatory bail. The office was directed to accept his Vakalatnama and intervention application. The intervener application viz. Criminal Application No.216 of 2017 was allowed on 12th April, 2017. The applicants were directed to implead complainant as

respondent no.2. The amendment was carried out and complainant was added as respondent no.2. The office note also indicate that the vakalatnama is not filed by the said advocate. Since, the complainant was represented by the advocate as stated above, the application was kept back till 3.00 pm. The name of advocate who represented the applicant was flashed out on the indicator. However, none appeared for the complainant, when the application was again called out in the second session.

6. I have heard learned advocate for the applicant and learned APP. Perused the FIR and the other documents on record. One of the co-accused had lodged complainant against the co-accused Nikuj Raval. It is revealed during the investigation that Mohan Pagare and Madan Pagare is the same person. The complainant referred the name of Madan Pagare as her cousin who had helped her in arranging the accommodation. The case of the applicant is that at the behest of Mohan @ Madan Pagare the present complaint was lodged. The alleged incident had occurred firstly in the house of the applicant on 19th June, 2016 and subsequently in the house of the complainant on the same day. No complaint was lodged with the police immediately after the said incident. Thereafter, the incident

dated 18 December, 2016 has been referred to implicating the co-accused Satish @ Ganesh More. The FIR was thereafter lodged on 27th December, 2016. The co-accused had been attributed role of threatening the complainant on 18th December, 2016 has been granted bail. The applicants are practicing advocates. There is delay in lodging FIR. The entire family has been implicated in the present case. There is no plausible explanation for delay. There appears to be animosity between the cousin of the complainant and the accused in the present case. Custodial interrogation is not warranted.

7. Taking into consideration the aforesaid circumstances, perusing contents of the FIR, and the circumstances put forth by the advocate for the applicant in support of their application, the case for grant for protection under section 438 of Cr. P.C. is made out.

ORDER

- (i) Anticipatory Bail Application No. 74 of 2017 is allowed.
- (ii) Interim order dated 16th January, 2017 is confirmed.

(iii) The applicants are directed to report to Vitthalwadi Police Station, Thane once in a week on every Saturday between 11.00 am to 1.00 pm till filing of chargesheet.

(iv) Applicants are directed not to tamper with the evidence.

(v) Application stands disposed of.

[PRAKASH D. NAIK, J.]