

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.668 OF 2017

Ramlal Sukhdev Sharma	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Manohar N.Rajput i/b R.M.Pandey for the applicant.
Ms.J.S.Lohakare,APP for the State.

CORAM: A.M. BADAR, J.
DATED: 8th NOVEMBER 2017

PC:-

1. The applicant/accused in crime No.I 239 of 2015 registered with Kasarwadvali police station, District Thane at the instance of the first informant, who is mother of the victim minor female child for offence punishable under section 376, 354, 354(A)1, 354(2), 354(B), of the Indian Penal Code r/w Section 3,4,7,8 Protection of Children from Sexual Offences and and under Section 3(2) and 4 of Maharashtra Prevention and Eradication of Human Sacrifices and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, by this application is seeking his release on bail after filing of the chargesheet and as the trial could not commenced within the

span of one year from the date of disposal of his earlier bail application.

2. Heard the learned advocate appearing for the applicant/accused. He pointed out the death certificate showing that mother of the applicant is died on 14.11.2016 and submitted that the applicant be released at least on temporary bail for performing last rites of his mother. It is argued that the spot panchnama shows situation prevalent on the spot of the incident and considering the fact that it is being a small house, it is not possible that the incident would happen there in presence of four persons. Statements of the neighbourers of the prosecuting party are not recorded. Though, Kasarwadvali police station was the jurisdictional Police Station, the prosecuting party approached the Kandiwali Police Station. There is 10 days delay in recording the statement of the victim female child and therefore, the applicant is entitled for bail.

3. The learned APP opposed the application by contending that the crime in question is serious and statement of the first informant as well as the victim child shows complicity of the applicant in the crime in question.

4. I have carefully considered the rival submissions and also perused the charge sheet. The incident in question took place on 27.9.2015 from 2 p.m. onwards. The FIR came to be lodged by mother of the victim female child on 28.9.2015. The first informant is also the victim of the crime in question. She has alleged outraging her modesty by the present applicant. She also alleged penetrative sexual assault on her minor female child by the present applicant. Date of birth of the minor female child is 29.10.2001.

5. The case in hand, *prima facie*, reveals that despite continuous hard efforts taken by several Rationalists, superstition in the society is not eradicated. The enactment of preventive legislation i.e. The Maharashtra Prevention and

Eradiction of Human Sacrifices and other Inhuman, Evil and Aghori Practices and Black magic Act, 2013 also could not bring the desired results.

6. The prosecution case, as reflected from the charge sheet, is to the following effect:

The First Informant, who herself is one of the victim, was suffering from some ailment. She as well as inmates of her house thought that she is suffering a spell of black magic. Hence, through an acquaintance, a 'Tantrik' came to be arranged. According to the prosecution case, the applicant/accused is the said 'Tantrik', whose services were hired for warding off the evil spirit and the spell of black magic. The applicant came to the house of the first informant, who is a lady aged about 35 years. Her husband named Anil Narang, son Akshay as well as her minor daughter aged about 14 years were present in the house. The applicant started performing *puja* by chanting mantras. During the course of that *puja* ceremony, he examined right palm of the minor

female child and told her parents that she is going to have a love marriage. The applicant then assured parents of the minor female child that if he ties a '*Tavij*' to the minor female child then she can be prevented from performing the love marriage. That is how the applicant, according to the prosecution case took the minor female child in the kitchen of the house. He remained with the minor female child inside the kitchen for about one and half hour. Subsequently, the minor female child informed the first informant that the applicant had denuded her and had performed penetrative sexual assault on her with a threatening that this fact should not be informed to anybody.

7. According to the prosecution case, prior to disclosure of the incident by the minor female child, the applicant had also taken the first informant /mother of the minor female victim inside the kitchen on the pretext of tying a holy string to her. The FIR reveals that then the present applicant on that pretext started denuding the first informant,

who is a woman aged about 35 years. The first informant protested and came out of the kitchen. After the 'Trantrik' i.e. the present applicant left their house, the First Informant immediately wanted to take a bath. At that time, her minor daughter i.e. main victim of the crime in question also insisted for taking bath immediately. This prompted the First Informant/mother to question her daughter as to what happened. Thereafter, her minor daughter had disclosed the incident to the first informant by stating that she had been raped by the 'Tantrik' in the kitchen of their house.

8. It is seen that initially, the members of the prosecuting party including the first informant went to the person, who had played a role in contacting the present applicant/'Trantrik' and then they approached the nearby police station. That police station advised the prosecuting party that the FIR needs to be lodged at Kasarwadvali Police Station. There seems to be nothing wrong in this course of

action considering the trauma suffered by the prosecuting party.

9. The incident took place inside the four walls of house of the first informant and as such non recording of statements of neighbour cannot be given any bearing importance at this stage. Statement of the minor female child came to be recorded only after complying the necessary formalities and taking the time from learned JMFC. As such, it cannot be said that 10 days delay in recording the statement of the minor female child results jettisoning the prosecution case.

10. Nature and seriousness of the crime is an important criteria for grant of bail. In the case in hand, under the guise of warding of the evil spirit and black magic spell, the applicant/self proclaimed 'Trantrik' is stated to have committed penetrative sexual assault on a minor female child apart from outraging the modesty of her mother. Even, this

Court is not satisfied that if released on bail, the applicant would not repeat commission of such similar offence which is against the Society.

11. In this view of the matter, no case is for bail is made out. The application is therefore rejected.

12. Needless to mention that all these observations are *prima facie* in nature and the trial court need not be influenced by these observations.

(A.M. BADAR, J)