

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1274 OF 2016

Sanjeev Mahendrakumar Dubey ...	Applicant/Accused
Vs.	
The State of Maharashtra ...	Respondent

Ms. Anjali Patil, Advocate for the applicant.
Mr. Affan Sait, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 28th February, 2017.

P.C.

This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on **20.3.2015** in Crime No.36 of 2015 registered at Aarey Police Station. The investigation is completed and charge-sheet is filed against the present applicant for the offences punishable under Sections 366A, 376, 377, 323, 504 and 506 of the Indian Penal Code.

2. Perused the records. Heard the submissions.

3. In the present case, on **30.10.2013**, the complainant Ms.`X' lodged a report at Aarey Police Station alleging therein that her mother had expired when she was hardly one year old. Her father was taking an alcoholic. She is studying in 9th Std. in Pradnay Bodhini High School, Goregaon. Her date of birth is **15.8.1999**. That she had met the present

applicant as he was residing in close proximity of her house. She had developed love for the applicant. She used to regularly visit the applicant and they used to go for joy rides at Girgaon Chowpaty, Juhu Chowpaty, etc. Three months prior to lodging of FIR, he had taken her to his house and had ravished her against her wish. He had threatened her of dire consequences in the eventuality that she disclosed the incident to anybody. He repeated the same incident. That they had sexual intercourse on many occasions. That he had forced her to extend financial aid. The allegations ranged for the period October 2012 to 22.10.2013. On the basis of the said report, Crime No.36 of 2015 was registered at Aarey Police Station. The applicant was arrested. Charge-sheet was filed. By an order dated 22.4.2014, the applicant was enlarged on bail by this Court (Coram:Revati Mohite Dere, J.). This Court had taken into consideration that there was a love affair between the applicant and the complainant. This Court had observed as follows :-

“Although consent of the prosecutrix is immaterial, as she was less than 18 years of age, considering the peculiar facts of the case and the fact that the applicant is 18 years of age, the applicant is entitled to be released on bail.”

The applicant is enlarged on bail. Certain conditions were imposed upon

him. It is not the case of the prosecution that the applicant has not abided by the conditions imposed upon the applicant while granting bail by this Court.

4. On **20.3.2015**, the same complainant Ms. 'X' again approached Aarey Police Station and lodged the report against the applicant on the basis of which Crime No.36 of 2015 is registered. She had alleged that Suman Gupta had introduced her to the present applicant. she was instrumental in making them meet each other. They used to meet each other quite often and visit several places. She has alleged that she was ravished by the present applicant on **22.2.2013**. Thereafter, within one week, the applicant had again called her to meet him. He had again ravished her. She has further alleged that on **24.3.2013**, Kishan Gupta i.e. elder son of Suman Gupta had learnt about the love affair between the present applicant and the complainant. Kishan Gupta had solicited sexual favour from her. He had called her home and had touched her inappropriately. That on **21.5.2013**, the present applicant had allegedly borrowed Rs.1,000/- from the complainant and had taken her to Yash Farm Guest House at Nalla Sopara. There they met one person. The applicant had forced the complainant to extend sexual favours to an unknown person. That he was paid Rs.5,000/- for the same. It is alleged that on **23.5.2013**, also the applicant had forced

her to have sexual intercourse with another person. She had narrated several incidents dated 25.5.2013, June, 2013, etc. The period of being traumatized by the applicant is from March 2013 to 22.10.2013. The said period is covered in the first FIR dated 30.10.2013.

5. This Court cannot be oblivious of the fact that the first FIR was lodged against the present applicant on **30.10.2013**. The learned counsel for the applicant submits that all these incidents had taken place during the said period and yet there is not a whisper about the same in the first FIR and only after he was enlarged on bail on 22.3.2014. The complainant has again approached the police station and had made allegations against the applicant in respect of the incidents of the year 2013 and that there is a delay of more than 1-1/2 year. It is submitted that being aggrieved by the order of having been enlarged on bail, the complainant had lodged the subsequent report. In fact, it can be a supplementary statement in the earlier case. The complainant has stated that since her grandmother was staying with her, she had not narrated the said incidents at the first incident i.e. in October 2013. She has alleged in the second FIR that the applicant had attempted to call upon her on her landline after he was enlarged on bail and inquired about her well-being. That she had then realized that he has

been enlarged on bail and she apprehended that he would again trouble her and therefore, she has lodged the subsequent report. She had specifically stated that she used to write a diary everyday. In the diary, she has specifically mentioned that Suman Gupta is responsible for all the trauma which she had to undergo. Perused the diary. She had alleged the incidents dated 7.12.2013, 10.12.2013, 13.12.2013, 17.12.2013 and so on.

6. It is pertinent to note that the applicant was taken into custody on **30.10.2013** and in the earlier C.R. and he could not have harassed her on the said date. The applicant was enlarged on bail on **22.4.2014**. She has narrated the incidents of 2013 as well as 2014 and during the said period, the applicant was in custody and therefore, the learned counsel for the applicant rightly submits that on the said fact, no implicit reliance can be placed on what she had written in the said diary. In fact, the said diary ought to have been a part of the charge-sheet in the earlier case. It is also specifically contended that the diary was written at the behest of the husband of her maternal aunt. In Crime No.36 of 2015, the uncle is an accused and has been charge-sheeted under Section 376 of IPC for having ravished the complainant on many occasions when she was staying with them. This Court was inclined to reject the application filed by the uncle and at that stage the application was withdrawn. Be that as it may, the

applicant was in custody from 30.10.2013 to April, 2014 and then from March 2015 till this date. In view of this, the applicant deserves to be enlarged on bail.

7. The observations herein are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration for the purpose of application for quashing, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more local solvent sureties in the like amount.
- (iii) The applicant shall not tamper or attempt to contact the prosecutrix or any witness concerned with the said case.
- (iv) The applicant shall not enter the jurisdiction of the Aarey of the Aarey Police Station, Mumbai where the prosecutrix resides.
- (v) The applicant shall attend the Virar Police Station, on the 1st Saturday of every month between 10.00 a.m. and 12.00 noon. The applicant shall furnish the address where he intends to reside to the Virar Police within two weeks of his release, and will keep them apprised if there is any

change in the address.

(vi) The applicant shall co-operate with the conduct of the trial.

(vii) If there is a breach of any of the conditions, the prosecution shall be at liberty to seek cancellation of applicant's bail.

8. Bail Application is allowed and disposed of on the aforesaid terms.

9 Parties to act on the authenticated copy of this order.

(SMT. SADHANA S.JADHAV, J.)