

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1499 OF 2016

Rrohan Bhavari Das

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. C. K. Talekar i/b Mr. Sanjay V. Sawant Advocate for Applicant.

Mr. Arfan Sait APP for the State.

Mr. B. R. Garande, PI Andheri Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 8th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 12/08/2015 in crime no. 429 of 2015 registered at Andheri Police Station for offence punishable under sections 376, 452 & 342 of the Indian Penal Code.

2) It is the case of the prosecution that Mrs 'X' was married to Bipin patel and they were residing in the house of Rasik Patel, as Bipin had expired on 13/05/2015. That on 11/08/2015, Rasik Patel had left the house to buy some grocery. He returned home. He knocked the door. The door was not being

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opened for quite sometime. He continued to knock the door. After sometime, the door was opened by one person who was putting on his clothes. Mrs 'X' was also seen in the house. Rasik Patel had driven that person out of the house. The said person had assaulted Rasik Patel. Rasik Patel inquired with his sister-in-law and she disclosed that the said person had come to their house asking for water. When she was about to give water, he had ravished her against her wish. That the said person had told Mrs 'X' that he would take her to his village. Thereafter, Rasik Patel had realized that the present applicant was working as weekly labourer in the said building had ravished his sister-in-law.

3) The statement of the survivor was recorded on 11/08/2015. The survivor is 45 years old woman. She has reiterated that on 11/08/2015, at about 11.30, one person had come to her house. He had asked for water. She had asked his name and he had disclosed that his name is Sachin. Soon thereafter, he had ravished her. The survivor was sent for clinical examination wherein she had reiterated the same history.

4) Papers of investigation indicate that the test identification parade was conducted and the applicant has been identified by the brother-in-law of the victim. Medical case papers indicate that survivor was suffering from moderate mental retardation. She was taken for psychiatry evaluation and at that time, the doctors had observed that the patient was having fearful disturbed sleep. She was suffering from intellectual disability and she was not able to communicate properly.

5) The learned counsel for the applicant submits that the said certificates as well as the memorandum of test identification parade do not find place in the charge-sheet. It is further submitted that it is the case of consensual sex. The applicant had disclosed to his owner that he was taken to the house of the survivor by the survivor herself. The learned counsel for the applicant submits that this is sufficient to indicate that it is a case of consensual sex and that only because the brother-in-law had returned home at the relevant time, the victim has concocted a story of forcible, coercive sex.

6) This Court is of the opinion that this would be a defence of the accused

at the time of trial, however, on perusal of papers of investigation it *prima facie* appears that the survivor was suffering from down syndrome and that the applicant had taken undue advantage of her mental State. Moreover, the conduct of the applicant in misleading the witnesses by disclosing his name as Sachin would indicate his culpability. The conduct of the accused can be taken into consideration under section 8 of the Indian Evidence Act and hence, this Court is not inclined to grant bail.

7) Application, being sans merits, stands rejected.

8) The learned Sessions Court shall not be influenced by the observations made herein above.

(SMT. SADHANA S. JADHAV, J.)