

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1568 OF 2016

Mr. Rinkku Rambabu Roy Applicant/Accused

Versus

State of Maharashtra Respondent
through D.B.Marg Police Station, Mumbai.

Mr Khan Abdul Wahab i/b. Mr. Ankush N. Dhokale for
Applicant/Accused.

Mr. Ajay Patil, APP for Respondent/State.

Mr. Basit Ali Sayyed, PI, Dr. D.B.Marg Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 20TH JANUARY, 2017.

P.C.

. Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 1st August, 2015 in Crime No.
188 of 2015 registered at Dr. D. B. Marg Police Station. The
investigation is completed and charge sheet is filed against the
applicant and co-accused under Sections 376, 376(I), 365, 363, 342,
34 of Indian Penal Code.

2. It is the case of the prosecution that on 1st August, 2015
the police of D. B. Marg Police Station had received a message from
the local residents of Mathew Road, D. B. Marg in respect of some

untoward activities in a room of dilapidated building. The police rushed to the spot, where they saw the present applicant and the victim Zayada Shakir Khan in a compromising position. They had brought the applicant and the victim to the police station. Upon enquiry with the victim she disclosed to the police that she has come to Mumbai along with her uncle, who is selling fruits. According to her, she was acquainted with one Vyenkatesh. It was further disclosed that on 1st August, 2015 she was standing near the bus stop at Nagpada. Vyenkatesh had come on a motor cycle and had asked her to accompany him to Chowpati. He was accompanied by another boy. It is alleged that both of them had taken her to a dilapidated building. They had kept her in a room. Vyenkatesh has disclosed the name of his friend as Rikku and Tayabhai. Vyenkatesh and Tayabhai had been requested to keep guard to that room and the victim was ravished by the present applicant.

3. The victim was taken for medical examination, where she disclosed to the Doctor that :

“On 31.7.2015 around 10.00 p.m. she was walking near the bus stop area in Kamathipura, when three boys approached towards her, she knows one of the by his face, but she does not know their names. They offered Rs.1500/- to and demanded that she should spend one night with them. But she refused. One of the accused (Vinky) told her that he will drop her to his sister home at Girgaon Choupati. She believed the accused, so she

had gone with that accused but the accused boy took her to some unknown place by his bike. When they reached there, the two other accused boys were already present there. -----*Narration of the act* ----- . The victim girl was crying and shouted loudly for help. Hearing her voices some unknown person alerted the police. Police nabbed two of the accused named (Vinky and Rinky) who were present outside the room. (The third boy succeeded to flee away from the spot). Victim girl was fully conscious at that time. She narrated the whole incidence to the police. Victim girl brought for medical examination to Nair Hospital, Mumbai. Later on victim girl came to know that the accused named were Vinky, Rinky, but who is Vinky, Rinky she does not know exactly.”

The applicant has been in custody her for almost 16 months. It is submitted by the learned counsel for the applicant that in view of the history narrated by the victim to the Medical Officer voluntarily would clearly indicate that she had voluntarily left with Vyankatesh and Rikku. It is submitted that the investigation is completed and charge sheet is filed. The learned APP submits that consent of the victim cannot be taken as she was a minor.

4. At this stage, the learned counsel for applicant has drawn the attention of this Court to the statement of one Jumman Chunne

Khan, which was recorded on 2nd August, 2015 and thereafter on 22nd October, 2015. Jumman Khan has claimed to be the Uncle of the victim girl. He has specifically stated that the police of D. B. Marg Police Station had called for the birth certificate or school leaving certificate of the victim. He had posed before the authority at Firozabad (Uttarpradesh) that he is father of the victim and he had introduced his wife Smt. Shabana as mother of the victim and has obtained the birth certificate of the victim. That the date of birth of victim was 11th April, 2000. That the date of registration on the said certificate is shown as 16th September, 2015 and the same was issued on 18th September, 2015. The learned APP submits that the date 16th September, 2015 is the date of filing of the application.

5. Upon perusal of the statement Jumman, it appears that he has specifically informed the police that he did not have the birth certificate of the victim. Her parents were illiterate and therefore they had not taken the birth certificate of the victim. He had approached the Health Department and had obtained the certificate. The certificate shows that Jumman and his wife are not parents of the victim. The certificate does not indicate that there was any basis for issuing the said certificate and it was on the basis of oral instructions of Jumman that the certificate has been issued. This issue raises a doubt as to whether the victim was a minor at the time when she was taken to the police station by the police. The X-ray report shows that the victim was more than 15 years and less than 17 years. The learned APP submits that the statement of the victim

was recorded under Section 164 of Cr.P.C. where she has reiterated the allegations levelled in the First Information Report.

6. The learned counsel for the applicant submits that the copy of the statement under Section 164 of Cr.P.C. does not find place in the charge sheet. It is also submitted that a statement is recorded in English by the Metropolitan Magistrate, Girgaon. It is submitted that it was only before the doctor that the victim could make a voluntary statement, and therefore, the statement made before the doctor cannot be ignored. Be that as it may, taking into consideration the discrepancy/variations in the statement of the victim made before the police and the statement made before the doctor at the time of clinical examination, the certificate issued by the Health Department of Uttarpradesh on oral instructions of Jumman, who is not real father of the victim, who has posed to be the father of the victim and other material, this Court is inclined to grant bail to the present applicant. Moreover, the applicant is in custody for more than 16 months, charge sheet is filed. There are no criminal antecedents, hence he deserves bail.

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

O R D E R

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 25,000/- with one or more local solvent sureties.
- (iii) The applicant shall report to the concerned police station on 1st and 3rd Sunday of each month till framing of charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)