

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL APPLICATION (BAIL) NO.320 OF 2017.

Mr. Rakesh Gaunder		Applicant.
versus		
State of Goa and anr.		Respondents.

Mr. R. Gawas, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Coram:-PRITHVIRAJ K. CHAVAN,J.

Reserved on:-8th January, 2018.

Pronounced on:- 10th January, 2018.

ORDER:

This is an application under Section 439 of Cr.P.C. The applicant who is facing a trial in Crime No.33 of 2017 of the offences punishable under Sections 341, 376 IPC in the Court of Additional Sessions Judge Panaji, has prayed for his release on bail. His earlier bail application dated 13.10.2017 came to be rejected by the learned Additional Sessions Judge on 22.11.2017.

2. Briefly stated the prosecution case is that, four months prior to 2.2.2017 when an FIR came to be lodged against the applicant, the prosecutrix alleged that when she had been to the Government Society near Suraj Bar, Nagzari, Curti, Ponda Goa for bringing ration, the applicant who is her neighbour came on his

scooter and asked her to occupy the pillion seat so that he would drop her near the Society. When the prosecutrix refused, the applicant alleged to have threatened and forced her to occupy the rear seat. He then instead of taking her to the Society took her behind Dada Vaidhya School inside the jungle. Thereafter he pulled out her Pajama, caught hold of her hands and had forcible sexual intercourse with her. She cried for help, however, as they were inside the jungle no one came for her help. It is also alleged that the applicant had forcible sexual intercourse again after 10 minutes and then he dropped her near the Government Society on his scooter. It is also alleged that the applicant threatened her not to disclose the said incident to anyone, else he would kill her family. It is the case of the prosecution that the prosecutrix was impregnated due to the forcible sexual intercourse by the applicant. After investigation Police Station, Ponda had laid a chargesheet against the applicant and now the applicant is facing trial before the learned Additional Sessions Judge.

3. Shri Ravi Gawas, learned Counsel appearing for the applicant argued that since the chargesheet has already been filed and the trial has commenced after framing the charge, custodial interrogation of the applicant is not required. He drew my attention to the statement of the prosecutrix under Section 164 of Cr.P.C. by stating that the prosecutrix had nowhere stated about raising

shouts at the time of alleged incident nor she had disclosed the said fact till it was found that she was pregnant. The learned Counsel also pointed out to the medical report of the prosecutrix issued by Goa Medical College, Department of Forensic Medicines dated 2.2.2017 that she carried 26 weeks foetus, which means pregnancy of 7 months, which creates a doubt as to whether she was impregnated by the applicant, as according to her, incident occurred about four months' back. It is also argued by the learned Counsel for the applicant that the applicant is a permanent resident of Ponda, having house property in the name of his mother. There is no question of his abscondance and he will abide by any terms and conditions.

4. On the other hand, the learned Public Prosecutor opposed the application on the ground that the applicant is not a permanent resident of State of Goa and there is every likelihood of his abscondance, if he is released on bail. The learned Public Prosecutor points out that there is possibility of threatening the prosecutrix, in case of his release, therefore, at least till the completion of the evidence of prosecutrix it would not be proper to release the applicant. It is further argued by the learned Public Prosecutor that the report of DNA, which is awaited, may not be conclusive evidence against the applicant for offence with which he is charged, as the evidence otherwise would be sufficient to

establish the complicity of the applicant in the offence alleged.

5. At the outset, it is clear from the order of the learned Additional Session Judge rejecting the application for bail of the applicant that she has already expedited the matter and taken up hearing on early basis. It appears that trial has already commenced. It is pertinent to note that though the applicant claims to be a permanent resident of house no.1250, Bablykhali, Nagar, Ponda Goa, no documentary evidence is tendered in support of his roots in the State of Goa and, therefore, possibility of his abscondance cannot be ruled out.

6. The Medical report of the applicant who was examined by Medical Officer, Goa Medical College indicates that there is nothing to suggest that the applicant is incapable of performing sexual intercourse from which it cannot be said at this stage that the applicant was incapable of committing the act. The DNA report which is awaited from Director, Centre for DNA Fingerprint and Diagnostics, Hyderabad, would be one of the aspect in determining the guilt or otherwise of the applicant and, therefore, that itself may not be a ground to release the applicant on bail. The prosecution's apprehension about threats to the prosecutrix in case of release of the applicant also cannot be ruled out and, therefore, in the fitness of the things, it would be desirable to conclude the

evidence of the prosecutrix.

7. The offence indeed is serious in nature, especially Section 376 of IPC which provides maximum sentence of life imprisonment and, therefore, for the foregoing reasons it would not be just and proper to release the applicant on bail. The learned Counsel has placed reliance on a ruling of this Court reported in **[(2010) 0 ALL MR(Cri)92]** in the case of **Shiney Suraj Ahuja Vs State of Maharashtra**. In the said case, it has been observed that there was no possibility of the applicant fleeing away from justice as he was a permanent resident of Mumbai, engaged in acting in film, possessed immovable property at Mumbai. Here in this case, as already stated above, there is nothing to show that the applicant has roots in the Society and that he would not abscond in case of his release in the light of the fact that he is not a permanent resident of this State. The ratio, therefore, could not be of any assistance to the applicant.

8. For the reasons stated hereinabove, I do not consider it a fit case in which the applicant can be released on bail. As such application stands rejected.

PRITHVIRAJ K. CHAVAN,J.

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