

Sarnobat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 203 OF 2018

Vithal Sambhaji Sandbhor.	.. Applicant.
Vs.	
The State of Maharashtra.	.. Respondent.

Mr. Dnandeo D. Shinde, for the Applicant.
Mr. Vinod Chate, APP for the Respondent.
Mr. Pradip B. Jadhav, PI, Khed Police Station.

CORAM : P. N. DESHMUKH, J.

DATE : 5th APRIL, 2018.

P. C. :

1. One of the accused involved in Crime No. 346/2017 registered with Khed Police Station for the offence punishable under Section 376(D) of Indian Penal Code has sought bail. Charge-sheet in the crime is filed. However, one accused is absconding.
2. Learned counsel for applicant by referring to the contents of report submitted that the same is false, lodged belatedly though, the incident is stated to be of 12th September, 2017 at 11.00 am. when the report is lodged on that day at 10.00 pm. It is submitted that applicant's involvement is due to the strained relations between applicant and prosecutrix as even prior to incident, as alleged in the report there was boundary dispute in respect of their fields. However, has admitted that

there is nothing to establish that any such boundary dispute was in existence on the day of incident.

Learned counsel for applicant by referring to documents filed with charge-sheet being station diary entry dated 14th September, 2017 had stated that prosecutrix has refused to undergo medical examination and had also refused to show the spot of incident and has thus contended that entire story in the report is cooked up, false and submitted that since, charge-sheet is filed application be allowed.

3. Additional Public Prosecutor opposed the application on the ground that there is sufficient evidence establishing applicant's involvement and on the ground that one accused is absconding whose role is also similar with that of the applicant.

4. In the background of submissions advanced as aforesaid, role of applicant in alleged incident is that, on 12th September, 2017 at about 11.15 am when prosecutrix was proceeding from her village Shirola by road, applicant along with unknown person arrived on their bike from her back and forcibly took prosecutrix on their motorcycle by National highway. It is specifically stated that near one brick kiln the motorcycle was stopped when prosecutrix attempted to shout. She also claims to have raised shout when she was forcibly made to sit by co-accused who was traveling as a pillion rider of applicant. However, co-accused pressed her mouth due to which she could not raise shout.

It is further case of prosecutrix that she was thereafter, lifted by applicant and co-accused to the nearby bushes where she was subjected to sexual intercourse one after another by applicant and co-accused on two occasions each and was also subjected to assault by fist and kick blows, who thereafter leaving prosecutrix on the spot left at around 2.00 pm.

4. From both the station diary entries referred by counsel of applicant, dated 14th September, 2017 along with the consent letter though, it is noted that the prosecutrix refused to give consent for her medical examination and had also informed the investigating agency that as she was not keeping well on 14th September, 2017 she would attend the police station some other time and point out the spot. Even if prosecutrix had refused her medical and has stated as aforesaid, these documents by itself do not doubt the contents of report as even otherwise there is nothing on record to establish false implication of applicant, except that the relations between applicant and prosecutrix were strained due to boundary dispute, much prior to incident. In that view of the matter, even if prosecutrix has not consented for her medical examination and had expressed her inability to accompany investigating officer to show the spot on 14th September, 2017, she had in clear term stated that, on that day she was not physically fit and has thus informed that she would attend the police station when may she

feel better and had in fact, showed the spot. In that view of the matter, both these documents relied upon by applicant cannot substantiate his innocence in the present matter.

5. On a specific query put to learned APP, on instructions he submits that clothes were produced by prosecutrix on 12th September, 2017 consisting her 'T' shirt and one leggings only. Said clothes were forwarded for its analysis to Chemical Analyzer on 17th October, 2017 i.e. all most after one month as such it is noted that the CA report is inconclusive. However, even if C.A. report is inconclusive as aforesaid, involvement of applicant is prima facie established from the report itself and since according to its further contents, delay caused in lodging report is prima facie found satisfactorily explained no case is made out for grant of bail. Even on considering the FIR the spot of incident from Khed police station is situated at distance of 5 Km. and according to complainant after she was left on the spot, she returned to her house and thereafter, her sister took her to police station which is stated to be at the distance of 3 Km. from her house which further explains the delay caused in lodging the report.

6. In that view of the matter no case is made out for grant of bail. However, facts stated as aforesaid certainly requires trial to expedite. Hence, the following order;

ORDER

- (i) Application is rejected.
- (ii) The learned Sessions Court seized with Sessions Case arising out of Crime No. 346/2017 shall make endeavour to decide the same expeditiously and in any event within one year from date of receipt of writ of this case.
- (iii) Registrar Judicial-I to communicate the order to the concerned Court.

[P. N. DESHMUKH , J.]