

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

CRIMINAL BAIL APPLICATION NO. 539 OF 2018

Royston Victor Saldanha	... Applicant
Versus	
State of Maharashtra	... Respondent

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Mr. Aabad Ponda i/b Mr. Milan Hebbali for Applicant.
Mr. Y. Y. Dabke, APP for the State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 20th AUGUST, 2018.

P. C.:

1. This is an application for bail in connection with C.R.No.246 of 2017 registered with Samata Nagar Police Station, Mumbai for offence under Section 376 of the Indian Penal Code. The investigation is completed and charge-sheet has been filed.

2. The prosecution case is that the applicant and the complainant were acquainted with each other. In the FIR it is alleged that on 5th June, 2017, the applicant-accused gave a telephonic call to the complainant and she was informed that computer job is available for her. On 6th June, 2017, the complainant visited the house of accused at Kandivali. She

informed her sister about her visit to the house of accused. The complainant also told her sister Alisha to come and pick her after some time. The accused thereafter switched off the light and forcefully had sexual intercourse with the complainant on two to three occasions. Complainant came below building when her sister Alisha was waiting for her. She narrated incident to her family. The FIR was lodged on 7th June, 2017.

3. Learned Advocate for the applicant submitted that the complainant is major. The circumstance clearly indicates that there was relationship between the complainant and the applicant-accused. It is further submitted that the complainant has stated in her statement before Magistrate that she called her sister Alisha to pick her from applicant's home, whereas, sister's statement indicate that she repeatedly made calls and therefore after some time complainant called her to pick her up. Alisha had stated that she and one Nilesh went to pick her up where Nilesh made repeated calls and asked applicant's address where she replied of not knowing flat and building number. It is further submitted that Nilesh had demanded Rs.50,000/- from applicant which is apparent from text messages stating that the victim had

disclosed him the incident mentions that the complainant had informed them not to come immediately. Learned Counsel also relied upon the CCTV footage, which according to him indicates that the prosecutrix showed cool and calm comforrt while leaving building. It is submitted that there was relationship between them. It is submitted that the said text messages and the CCTV footage was handed over to the investigating officer during the course of investigation. It is submitted that taking the alleged act to be true, the circumstances indicate that it was consensual. It is submitted that the applicant is in custody since last one year. The investigation has been completed and charge-sheet has been filed.

4. Learned APP submitted that overt act has been attributed to the applicant by first informant. She has stated that the applicant has sexually assaulted her on three occasions on the date of incident. It is submitted that the evidence on record establishes the complicity of the applicant in the said crime. At this stage version of complainant cannot be brushed aside.

5. I have perused the statement of the complainant and the witnesses. The messages exchanged between both the parties

which are annexed to the application shows that the complainant and the accused were acquainted with each other. The messages indicate that they were in relationship. It is alleged that when the complainant had visited the house of accused, the accused has forcefully committed intercourse with the complainant two to three times. I have also perused the statement of the sister and mother of the complainant. The investigation is completed and the charge-sheet is filed. The applicant is in custody for about one year. On perusal of evidence on record and the documents annexed to this application, it appears that complainant and applicant-accused were acquainted with each other and the alleged act appears to be consensual. In these circumstances bail can be granted to the applicant.

ORDER

- (i) Criminal Bail Application No.539 of 2018 is allowed.
- (ii) The applicant is directed to be released on bail in connection with C.R.No. 246 of 2017 registered with Samata Nagar Police Station at Mumbai, which is the subject matter of Sessions Case No.308 of 2017. The

applicant be released on bail on furnishing P.R. Bond of Rs.20,000/- with one or more sureties in the like amount.

(iii) The applicant shall report Samata Nagar Police Station, Mumbai once in fortnight on saturday between 10.00 a.m. and 12.00 noon till further orders.

(iv) The applicant shall not tamper with the evidence.

6. The criminal application stands disposed of.

(PRAKASH D. NAIK, J.)

Shridhar
Marutirao
Sutar

Digitally signed by
Shridhar Marutirao
Sutar
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