

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

BAIL APPLICATION NO. 1099 OF 2018

Kanjibhai Punjabhai Waghela	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. Milan Desai I/by Mr. T.R. Patel for the applicant.
Mr. R.M. Pethe, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 19th OCTOBER, 2018.**

P.C.

1. This is an application for bail in connection with C.R. No. 469 of 2017 registered with Wadala T.T. Police Station Under Section 376, 506 Indian Penal Code and Section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Human Sacrifice and other inhuman, evil and Aghori Practices and Black Magic Act, 2013. The First Information Report was lodged on 25th November, 2017.

2. Prosecution case is that complainant is aged about 33 years was studying upto 12 standard she was residing alongwith her parents. In November, 2015, the complainant and her mother had visited the house of her sister of relative at their native place. At

that time, the relative was appraised of illness of complainant's mother and her disturbed state of mind. The sister-in-law of the complainant informed the mother of the complainant about the applicant who treats such patients with the help of vedic mantras and rituals. In pursuant to that applicant was called by the relative of the complainant in her house at Bhavnagar and was informed about the illness of complainant. The applicant told them that he would visit their residence to ascertain the actual cause of illness of the complainant. Subsequently, the applicant visited the residential premises of the complainant at Sion and further inspecting the house and reciting some mantras he told the mother of the complainant that the illness is on account of the complainant and some physical healing will have to be done. They were also informed that the uncle of complainant has done some evil magic upon them and told the mother of the complainant go out and fetch lemon thereafter told the prosecutrix that he will have to perform certain rituals. In January, 2016, the applicant visited the house of the complainant and told her mother to fetch lemon for which she left the house. Applicant accused then represented to the complainant that uncle had done genital evil act and thereafter vouching in the name of Goddess, the accused told

the complainant that he will have to transfer his sperms into her body and saying so he further stated that she will have to do as told to her by him otherwise she would invite the wrath of Goddess. Thereafter, the accused recited some mantras and committed sexual intercourse with the complainant. He also threatened her that if she discloses the incident to any other person she would invite wrath of Goddess. Hence she did not disclose the incident to any other persons. After a period of about two weeks, the accused again visited their house and made false representation about the evil act of complainant's uncle and again committed sexual intercourse with the complainant against her will. The complainant thereafter started keeping unwell. The complainant alongwith her parents went to Limbdi Police Station to register complaint. However, for want of jurisdiction, they were directed to approach the police station in Mumbai. Subsequently, the FIR was registered on 25th November, 2017. The applicant was arrested on 29th November, 2017. Investigation is completed and the chargesheet is filed.

3. Learned advocate for the applicant submits that the complaint is lodged belatedly. First incident as alleged by the complainant had occurred in January, 2016 and the second

incident had purportedly occurred at the end of the same month. However, FIR was lodged on 25th November, 2017. There is no medical evidence to corroborate the alleged act. It is submitted that the complainant had allegedly approached the police station at Limbdi and she was directed to approach the Police Station having jurisdiction. Even thereafter there is lapse of time in lodging the First Information Report. It is further submitted that it is difficult to accept that the mother of the prosecutrix went out of the house to fetch lemon while the accused had committed sexual intercourse. It is submitted that tenor of the applicant would infer that FIR was lodged because the complainant was falling ill and her health condition had deteriorated. It was believed that due to magic committed by accused the health of complainant is affected. It is submitted that second incident had allegedly occurred at the end of January, 2016. The applicant accused had suddenly without intimation visited the house of the applicant. It is difficult to believe that he was aware that other family members were not present in the house when he visited the house and committed the sexual intercourse. The complainant is a women aged about 33 years and it is difficult to accept that on believing the alleged representation she had subjected herself for

physical relationship. The statement of the witnesses viz. mother of complainant and the father indicate that they were present in the house when the alleged incident had occurred and if that is so, it is difficult to accept that the accused had indulged in physical relationship with the complainant. The offence under Section 376 of Indian Penal Code is not made out. It is further submitted investigation is completed and chargesheet is filed.

4. Learned APP submitted that the applicant has committed serious crime. Specific role has been attributed to him. There is sufficient evidence to show his involvement in the crime. He had visited the residence of complainant and committed sexual offence with her on two occasions. She had also lodged the complaint with Maharashtra State Women Commission on 5th November, 2016. Delay in lodging FIR is not a ground for grant of bail. The applicant has pretended himself to be a person who eradicate evil while reciting mantras and applicant had sexually assaulted the victim. He has committed serious crime under the Maharashtra Prevention and Eradication of Human Sacrifice and other inhuman, evil and Aghori Practices and Black Magic Act, 2013. It is further submitted that the statement of the complainant was also recorded under Section 164 of Code of Criminal Procedure

which also shows the involvement of the applicant in the crime. It is further submitted that offence has been registered against the applicant at Limbdi under the provisions of Gambling Act. It is submitted that considering the nature of offence and the manner in which the same was committed by the accused, bail may not be granted and the application be rejected.

5. I have perused the documents annexed to this application. The alleged incident had occurred in January, 2016. FIR was lodged on 25th November, 2017. The complaint was lodged with the Maharashtra Women Commission on 5th November, 2016. However, the complaint with the police station was lodged at Mumbai on 25th November, 2017. It is stated by the complainant that initially she had approached Limbdi police station for want of jurisdiction, the police did not register FIR. Even thereafter the complainant had waited for substantial time to lodge the FIR. The tenor of statement of the mother of the complainant indicate as if she is witness to the incident. Learned counsel for the applicant has submitted that the complaint lodged to Mahila Ayog is not a part of chargesheet nor any statement of the person from said Women Commission was recorded during the course of investigation. The statement of complainant was recorded under

Section 164 of Code of Criminal Procedure which indicate that she went to Limbdi Police Station to lodge the report against the accused alongwith her mother and thereafter came to Mumbai and then lodged report to Wadala Police Station. It is apparent that there was substantial delay in lodging the First Information Report. The complainant is a major women aged about 33 years. Investigation is completed and the chargesheet has been filed. The tenor of the complaint indicates about grievance of the complainant about the sexual assault on her is that she suffers illness after the alleged act was committed by the accused and apparently, the complaint was lodged since her health condition had worsened. Investigation is completed and chargesheet is filed.

6. Taking into consideration of the circumstance and also considering the fact that applicant is in custody since 29th November, 2017 the case for grant of bail is made out.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No. 469 of 2017 registered with Wadala T.T. Police Station on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;

- iii. Applicant shall report concerned police station once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon till further order;
- iv. Applicant shall not tamper with the evidence;
- v. Applicant shall attend the trial court regularly on the date of hearing unless exempted by the Court.
- vi. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
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