

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1377 OF 2018

Upendra Naresh Makwana ... Applicant
Vs.
State of Maharashtra ... Respondent

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Ms. Rehana Begum Sheikh for the applicant.
Ms. A.A. Takalkar, APP for the Respondent-State.
Mr. Dinesh. Y. Shelar, PSI, Kalwa Police Station is present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 24th OCTOBER, 2018.

P.C.

1. This is an application for bail in connection with C.R. No. I-264 of 2017 registered with Kalwa Police Station, District Thane for the offence punishable under Section 376 of Indian Penal Code. First Information Report was registered on 12th August, 2017.
2. Prosecution case is that victim's niece was taking tuition with the wife of the applicant. Victim is a married lady. She used to drop and pick up her niece from the tuition class. On the day of incident, the accused/applicant was taking tuitions as his wife was not available. The victim had visited tuition class to pick up her niece. At that time, the accused told the victim to wait for sometime in the house. The accused then told the other student to go home except victim's niece. The tuition class of niece was

continued. Applicant/accused told the victim to prepare tea. Applicant/accused then forcibly took the victim to the kitchen and had committed sexual intercourse with her. Immediately thereafter the victim informed about the incident to her family members and the FIR was registered on the same day. Statement of various persons were recorded and chargesheet has been filed.

3. Learned advocate for the applicant submitted that applicant has been falsely implicated in this case. There is no evidence to corroborate the version of the complainant. Medical evidence does not support the version of the victim. There are contradictions in the statement of the complainant and child witness. Victim was pregnant at the time of alleged incident. It is difficult to believe that the accused would commit such act forcibly when the niece of the victim was present in the house. It is further submitted that applicant is in custody from the date of arrest and hence further detention is not necessary.

4. Learned APP submitted that there is sufficient evidence against the applicant. The FIR was lodged immediately. The complainant has stated attributed specific overt act to the applicant. The crime is serious. The statement of the niece also support the prosecution case. There is no reason to discard the

version of victim.

5. I have perused the documents on record. The incident took place on 26th August, 2017. Immediately, the complainant narrated the incident to her family members. Apparently, there is no reason to doubt the version of the victim. She is a married lady and was pregnant at the time of incident. The accused was conducting tuition class on the day of incident. The statement of the wife of the accused indicate that she was not present at the house on the day of incident. Niece of the victim is aged about 6 years. She has stated that the accused had assaulted the victim. He wanted her to prepare tea and accused had pulled her into the kitchen. She further stated that she do not know what has happened. Thereafter, child witness has given natural version. She was sitting in the main room. According to the prosecution, the incident had taken place in the other room. Considering the totality of the circumstances, there is no reason to doubt the genuineness of the statement of the victim. Sexual intercourse was committed without her consent by the accused. In the circumstances, no case for grant of bail is made out. Criminal Bail Application stands rejected.

(PRAKASH D. NAIK, J.)