

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1576 OF 2018

Yousuf Nooruddin Shaikh,
Age 28 years, Occ.Driver,
R/o.New Tilak Nagar, Room No.403,
M.I.Colony, Chembur (W), Mumbai-400 089. Applicant

versus

The State of Maharashtra Respondent

Mr.Fakhruddin Khan for applicant.

Mrs.G.P.Mulekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th September 2018

PC :

1. Leave to amend to correct the name of applicant. Amendment be carried out forthwith. This is an application for bail. The applicant is arrested on 24th March 2018. The offence is registered with Tilak Nagar Police Station vide Crime No.109 of 2018 for the offences punishable under Sections 363, 328, 376 r/w Section 34 of Indian Penal Code and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012.

2. The case of prosecution, in short, is that on 23rd March 2018, at about 12.50 noon, the victim girl went to bring fish from the market and on the way she met with applicant and his friends who

asked her to come to Kharghar and accordingly the girl left to Kharghar along with accused persons. The accused made her to drink alcohol. As a result of which she suffered dizziness. The applicant-accused then committed sexual intercourse with her. The victim was then dropped near her residence. Thereafter she left the house and she stayed out the entire night. The complaint was lodged by her mother against unknown persons. Subsequently the statement of victim girl was recorded wherein she has alleged sexual assault committed by the applicant.

3. Learned advocate for applicant submitted that there is no evidence to establish the charge u/s 376 of Indian Penal Code. The medical evidence does not support the complaint of sexual assault. The FSL report also does not corroborate the version of complainant. There is nothing on record to indicate that the applicant has committed forcible sexual intercourse with the victim. It is further submitted that according to the victim, she was friendly with the applicant. The investigation is completed and charge sheet is filed. The applicant is in custody since the date of arrest.

4. Learned APP submitted that the statement of victim categorically refers to the sexual assault by applicant. It is submitted that there is no reason to disbelieve the version of complainant. It is further submitted that during the course of investigation, bill with regards to purchase of alcohol was found in possession of one of the accused, which corroborates the version of applicant that the accused has consumed alcohol and even complainant was made to consume the same. The victim had also shown the place of incident. She was minor at the time of incident. Thus, according to the learned APP,

there is sufficient material to show the complicity of applicant in the said crime. It is also submitted that the CA report in respect to the clothes of victim and applicant is awaited.

5. I have perused the documents on record. The alleged incident had occurred on 23rd March 2018. As per the version of the victim, the accused has committed sexual intercourse. The medical history which is part of the charge sheet, refers to the statement of victim wherein she states that she was in relationship with the accused. On 23rd March 2018 she came to meet the accused. Then they went to pick up friends at Chheda Nagar and from there they went to Kharghar at the house of friend of applicant. She was forced to drink and she felt dizzy. The applicant thereafter committed alleged act. On perusal of the medical case paper with regards to the examination of victim, it can be seen that no final opinion was given and what is indicated is that the authorities are awaiting for FSL. It appears, medical examination report does not indicate sexual assault. I have also perused the CA report with regards to the pubic hair and nail clippings, which indicate that there was no blood nor any tissue matter detected. The report also indicate that there was no semen detected on the exhibits. Taking into consideration the totality of circumstances and the nature of evidence, the fact that accused and victim were acquainted with each other and they were in relationship, investigation is complete and charge sheet is filed, and that the applicant is in custody from 23rd March 2018, bail can be granted to the applicant. There are no reported criminal antecedents against applicant.

6. Hence, I pass following order :

ORDER

- (i) Criminal Bail application No.1576 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.109 of 2018 registered with Tilak Nagar Police Station, Mumbai on furnishing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report the investigating officer of Tilak Nagar Police Station, Mumbai on every Saturday between 10 am and 12 noon till conclusion of trial;
- (iv) The applicant shall not enter in the area of jurisdiction of Tilak Nagar Police Station till further orders;
- (v) Observations made in this order are for considering grant of bail and Trial Court shall not be influenced by the same.

(PRAKASH D. NAIK, J.)

MST