

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1775 OF 2018

Ramtehal Dome Yadav, Age 40 years, R/o.Room No.558, Shankarwadi Chawl, INS Hamla, Madh-Marve Road, Malad (W), Mumbai. (Presently at Thane Central Prison)	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Arun Rajput with Ms.Anjali Patil for applicant.
Ms.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st October 2018

PC :

1. This is an application for bail. The applicant was arrested on 5-10-2017. The FIR was lodged with Dindoshi Police Station on 2-10-2017. Initially offence was registered under Section 363 of Indian Penal Code. Subsequently the charge under Sections 376, 342 r/w 34 of IPC and Sections 3 and 4 of Protection of Children from Sexual Offences were registered. The investigation is completed and charge sheet is filed.

2. The prosecution case is that the victim was aged about 17 years of age at the time of incident and was missing from her residence from 28-9-2017. The complainant is the mother of victim. As per her version the victim is mentally retarded child. On the earlier occasions she had disappeared from house. The earlier incidence had occurred in October-2016 and in July-2017. In view

of the above, the complainant had called her married daughter to keep watch on the victim. On 28-9-2017 the complainant, her elder daughter and son-in-law had gone out for work by closing the door of the house from outside. When they returned home, the victim was not found at the residence and she returned on 3-10-2017. Subsequently supplementary statement of the complainant was recorded on 5-10-2017. In the said statement she had referred to the statement made by the victim child. According to the complainant, the victim had informed her that she has left the house on 28-9-2017 and she met accused no.1 who is known to them as he was the person who used to drop her younger brother to school being rickshaw driver. It was further informed to her that the victim had gone to see Garba in the area and in the night accused no.1 met her, who took her in the auto rickshaw. They went to some premises and the said accused had committed sexual intercourse with her without her consent. On the next day i.e. on 29-9-2017, another unknown person came. Accused no.1 Kamlesh was also present in the premises. The another unknown person also had sexual relationship with her. The victim managed to run away from the place of incident and returned home on 3-10-2017. The statement of the victim child was recorded on 5-10-2017. She has referred to the incident as stated hereinabove. Subsequently on 7-10-2017 another statement of the victim was recorded in which she has also referred to the sexual assault by one another person. However, the exact date of the incident has not been mentioned in the said statement. Thus, in her version, as narrated to the complainant and in her statement, the victim had referred to the incidents which had occurred on the aforesaid dates and had referred to involvement of two persons and subsequently had referred to another incident without mentioning

the date of incident. In the statement u/s 164 of Cr.P.C, the victim has, however, referred to only two persons being involved in the crime and there is no reference to the third person.

3. The spot panchanama was recorded by police. It is alleged that during the search of the accused, the victim has pointed out accused no.1 Kamlesh and the applicant who was with accused no.1. The applicant was unknown to victim. The victim was sent for medical examination. In the history submitted to the hospital during the examination, it was stated that there was history of sexual assault by multiple people, however, exact dates could not be elicited. It was also noted that the survivor was in local area by herself and on the other side she names the rickshaw driver who knows her and the survivor keeps changing her history regarding her whereabouts. It was also noted that there is history of sexual assault by multiple people in October-2016 and survivor was pregnant and had undergone abortion in Shatabdi Hospital and she was kidnapped two months back by two rickshaw drivers. In the medical report it is indicated that there are no report of external injuries, however, sexual assault cannot be ruled out.

4. In the aforesaid factual scenario it was contended by the advocate for the applicant that the prosecution is merely relying on the alleged identification of applicant being the unknown person, who had allegedly committed sexual assault. There was no identification parade but the identification was during the search of accused and allegedly the applicant was the person found with accused no.1 at the time of the said alleged incident. It it submitted that medical history indicate that the victim was not in a position to

collect actual facts and she kept on changing the history of assault. It is further submitted that in the initial statement, reference was made to accused no.1 who was known to the family of victim and other unknown person who had committed the sexual assault on 28th and 29th September 2017. Subsequently she has also referred to involvement of third person but the actual date of incident is not mentioned. It is, therefore, submitted that this is a case of mistaken identity and only on the basis of such mistaken identity, the applicant cannot be continued in custody for prolonged period. The investigation is completed and charge sheet is filed. It is also submitted that there is no corroborative evidence in the nature of clothes of the victim and the accused and presence of any other incriminating evidence against applicant.

5. Learned APP stated that the accused is involved in serious crime. He is identified by the victim child and there was no need of separate identification parade. The victim has attributed overt act to the applicant as a person who had committed the alleged act. The discrepancies as pointed out by the advocate for applicant, can be agitated at the time of trial.

6. Having heard both sides and having perused the documents, it is apparent that there was a history of victim leaving the house in the past. The only person allegedly known to them was the rickshaw driver (accused No.1). The applicant was allegedly unknown person who was involved in the sexual assault which had allegedly occurred on 29-9-2017. However, she had also implicated other person who was not referred to in her earlier statement without disclosing as to when the incident committed by the third person had occurred. The

history also indicate that she was not clear in disclosing the history of assault. There is no other evidence showing involvement of the applicant in the crime. The applicant was impleaded on the basis of statement made by the victim child during the search of accused, where applicant and accused no.1 were found together in the area where the alleged crime was committed. In the circumstances and more particularly considering that the applicant is in custody from the date of arrest, bail can be granted to him.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1775 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.657 of 2017 registered with Dindoshi Police Station, Mumbai, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for four weeks;
- (iv) The applicant shall report Dindoshi Police Station once in a month on every first Friday between 10 am and 12 noon till further orders;
- (v) The applicant shall not tamper with evidence.

(PRAKASH D. NAIK, J.)