

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1809 OF 2018

Mohammad Hanif Aslam Shaikh,
Age 32 years, Occ.Service,
R/o.Room No.2 B A, Gazi Chawl,
Bandongari, Ashok Nagar, Kandivali (E),
Mumbai-400 101.

(Presently at Taloja Jail)

Applicant

versus

The State of Maharashtra

Respondent

Ms.Nidhi G. Datiya for applicant.

Mr.R.M.Pethe, APP, for State.

Mr.Rahule, Police Inspector, Kandivali Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st September 2018

PC :

1. The applicant is arrested on 1st April 2018 in in connection with CR No.186 of 2018 registered with Kandivali Police Station for offences under Sections 376, 392, 384, 109, 323, 504, 506 read with Section 34 of Indian Penal Code. The FIR was registered on 25th March 2018. The applicant preferred application for bail before the Sessions Court which was rejected on 18th June 2018.

2. The prosecution case is that the complainant is residing at the given address along with her husband and three children. Her husband is working as supervisor in catering business. He used to remain outside most of the time for catering orders. In 2007 she started residing at Kandivali along with her husband. The accused was having his mobile shop near her house. He was the friend of

complainant's husband and hence he used to visit her house. In January-2011 when the complainant was alone at the home, the accused visited the house. Children were sleeping. At that time the accused gave her ice-cream to eat and after consuming the same, she felt sleepy. When she woke up she realized that the accused had sexually assaulted her. He took her photographs and videos. Thereafter under the coercion the accused had sexual intercourse with the complainant on several occasions. She had aborted on three occasions. On 29th December 2011, the complainant started residing at Nalasopara. The accused followed her even at that place and had sexual relationship with her. He used to assault her. The accused had forced the complainant to part with Rs.5,50,000/-. The accused had committed acts of sexual assaults on several occasions. On 16th January 2018 when the complainant was in the dispensary at Kandivali, the mother and sister of accused came there and told her husband that the third child got birth from the applicant on account of relationship of applicant and complainant. The husband threw the complainant out of the house. However, due to intervention of her sisters-in-law, she again joined the house of her husband. On 17th January 2018 the mother and sister of the accused came to Vasai Police Station and asked her to take money and compromise the matter. Subsequently she lodged the FIR.

3. Learned counsel for applicant submits that the FIR is false and fabricated. First incident as alleged had occurred in January-2011, however, the FIR was lodged in March-2018. It is submitted that the allegations in the FIR are concocted. Taking the allegations as it is, apparently it was a consensual relationship and both of them had allegedly physical relationship on several occasions. It is submitted

that the applicant is in custody from the date of arrest and further detention of the applicant is not necessary. Learned counsel pointed out the statement of husband of the complainant recorded during the course of investigation, which indicates that the complaint is contradictory to version of her husband. It is further submitted that there was apparent affair between the complainant and applicant and, therefore, the offence u/s 376 of IPC is not made out. The complainant was a married lady having children and was of sufficient understanding to know what she is doing and therefore further detention of the applicant is not necessary.

4. Learned APP submitted that the incident of January-2011 was committed by the accused without consent of the complainant. She was given ice-cream to eat. After consumption of the same, the complainant felt sleepy and the applicant had committed sexual intercourse. It is submitted that the conduct of the applicant disentitles him for grant of bail. The circumstances in which the complainant was cornered is required to be considered. She was a mother of minor children. The accused has threatened her and forced her and has taken undue advantage of the situation and committed the said act. It is further submitted that social background of the complainant is required to be looked into. She was required to undergo abortion on three occasions. It is submitted that while undergoing the abortion, the consent form was filled up in the name of husband of complainant by the applicant qua signing the consent form with the signature of complainant's husband. It is submitted that the victim is an illiterate lady. She was subjected to part with amount. She was coerced to enter into relationship and therefore the applicant is not entitled for the relief of bail.

5. I have perused the FIR and other documents which are part of charge sheet. On perusal of FIR it is apparent that the complainant is the married lady having three children. As alleged, the accused was having his shop near her residence. The first incident of sexual intercourse had taken place in January-2011. Allegedly there were three abortions. The case of complainant is that after consuming the ice-cream she felt sleepy and the accused had taken undue advantage of the situation. Thus, the grievance about the incident of January-2011 was made in 2018 by lodging the FIR. It is also apparent from the allegations in the FIR and other documents which are part of the charge sheet, that there was sexual relationship between the complainant and applicant on several occasions.

6. Apparently the relationship was consensual. The FIR has been lodged after a period of seven years from the date of first alleged sexual intercourse/rape. The investigation is complete and charge sheet is filed. The applicant is in custody from 1st April 2018. The consent form as referred to by learned APP was filed at the time of admission of complainant for undergoing abortion. Assuming that the signature of the husband of complainant was adduced by the applicant, it appears apparently that it was by consent of the complainant. No complaint was filed at the earlier point of time alleging that she was forced to undergo abortion or that she was forced to have sexual relationship with the applicant. Taking into consideration aforesaid circumstances, case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1809 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.186 of 2018 registered with Kandivali 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 Kandivali Police Station once in a month on every first Monday between 10 am and 12 noon till further orders;
- (iv) The applicant shall not tamper with the evidence and shall not approach the complainant or any other witness for any reason.

(PRAKASH D. NAIK, J.)

MST