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

BAIL APPLICATION NO.2153 OF 2018

Shravankumar @ Rahul Dhanram Sharma	..Applicant
Versus	
The State of Maharashtra	..Respondent

S.G. Rajput for the Applicant.
P.P. Shinde, APP for the State.
Mr.K.S. Londhe, API, Hadapsar Police Station present.

CORAM : REVATI MOHITE DERE, J.

DATED : 22nd OCTOBER 2018

P.C.:

. Heard learned counsel for the parties.

1] This is the second Bail Application preferred by the Applicant. The first Bail Application was rejected on 7th April 2017 on merits by this Court (*Coram : Revati Mohite Dere, J*). Hence, this application is placed before this Court.

2] Learned counsel for the Applicant submits that Panchanama dated 23rd September 2015 of the CCTV footage, which was collected on the pendrive shows, that the prosecutrix (complainant) and the Applicant had

arrived on 28th August 2015 in a Scorpio car at about 1.45 a.m. and thereafter in the afternoon at 1.26 p.m the Applicant, complainant and two others i.e. Sumit and Richa (a couple) went out and returned at about 9.09 p.m. back to their cottage; that at around 9.48 to 9.49 they went out for a stroll; that accused Sumit Chaudhary and Richa Chaudhary returned back at around 11.09 p.m. and thereafter the prosecutrix (complainant) and the Applicant returned back at around 11.43 p.m. to their cottage and on 29th August 2015 they all left the cottage in their Scorpio at 8.21 a.m.

3] Learned counsel for the Applicant submitted that the applicant has been falsely implicated in the said case and that infact, it was the prosecutrix's boyfriend, who was responsible for the act.

4] The learned APP opposed the application. She submitted that there is no change of circumstance warranting interference in the earlier order dated 7th April 2017.

5] Perused the papers. The applicant's first Bail Application being Criminal Bail Application No.265 of 2017 was rejected on merits by a detailed order dated 7th April 2017. The statement of the Prosecutrix shows that she was 19 years old at the relevant time and was studying in a

Fashion Designing Institute and was staying in a rented premises. It appears that on 27th August 2015, the landlady's son Sumeet and his wife Richa decided to go to Alibaug. The Prosecutrix also agreed to go with them. According to the Prosecutrix just then, Sumeet's friend i.e. the Applicant aged about 32 years came in a Scorpio car, pursuant to which all of them reached Alibaug at about 11.30 p.m. on 27th August 2015. She has stated that they looked for lodging and finally found a place where they booked two rooms. She has stated that in one room she and co-accused Richa slept and in the other room co-accused Sumeet and the applicant slept that night. She has further stated that on 28th August 2015 at about 11.00 a.m. all of them went on the Beach, at Kashid. She has stated that, thereafter, the Applicant, co-accused Sumeet and his wife Richa consumed beer and they all had something to eat. She has further stated that in the night when they reached to the lodge, all of them went to the Beach near the lodge and were chatting; that after some time they returned to the lodge and that the applicant and the other co-accused went for dinner, however as she was tired, she did not accompany them and went to her room and slept. She has stated that she did not lock the door, as Richa was to come. She has further stated that around 3.00 a.m. on 29th August 2015, Richa did not come and instead the Applicant came near her and tried to force himself on her. She has further stated that she tried to push

the Applicant, however, he put his hand on her mouth and undressed her. She has further stated that she was extremely scared and that the Applicant sexually assaulted her thereafter. According to the Prosecutrix, when she tried to escape, the Applicant assaulted her on her face and threatened her with dire consequences, and that after some time, she got up and went to the next door room and woke up Richa and told her that she wanted to go back home immediately. According to the Prosecutrix, she did not disclose the incident of rape to Sumit and Richa in the car, as she was extremely afraid. She has further stated that, thereafter they reached home and at around 10.30 a.m; that she wanted to disclose the incident to her landlady, however , she was performing pooja. She has further stated that she called her friend Rahul and asked him to come home immediately. According to the Prosecutrix, after performing pooja, the landlady left home and thereafter Rahul, her friend came home. She has stated that on seeing her friend she started weeping and narrated the entire incident to him. She has further stated that she also broke the glass pane and tried to cut her wrist with the glass piece, pursuant to which her friend took her to the MGM Hospital, at Kamothe. She has further stated that her friend disclosed the incident to her brother and her brother disclosed the incident of sexual assault to her parents.

6] The Medical Report of the applicant dated 26th September 2016 shows that he was under the influence of alcohol at the time of sexual assault. The Medical Report of the Prosecutrix dated 30th October 2016 shows that she has given the following history to the Doctor :

“When she had gone for an outing with the owners of her paying-guest accommodation and their friend Shravankumar @ Rahul Sharma and stayed at Alibag, she was raped by Shravankumar @ Rahul Sharma around 3.00 to 4.00 a.m. on 29th August, 2015”.

The injuries sustained by the Prosecutrix are ; bite marks on right chest, lacerated wound on left elbow, multiple linear abrasions on left wrist and injury superficial on inner side of upper lip. Her hymen was torn and injury was noticed on the hymen. The age of injuries was stated to be fresh.

7] It is pertinent to note that the Prosecutrix was only 19 years of age at the time of the incident, and the applicant was about 32 years old. The Applicant took advantage of a young girl aged 19 years and sexually assaulted and exploited her. The Prosecutrix has lodged the complaint promptly. Prima-facie, there appears to be no reason for her to falsely implicate the Applicant, more particularly when she had met him for the first time on that day. The Prosecutrix, a college going girl was so

traumatized with the sexual assault that even she attempted to take her life, as she was violated. If the Applicant is enlarged on bail, the possibility of the applicant tampering with the evidence cannot be ruled out. This Court vide order dated 7th April 2017 had rejected the Applicant's application for bail considering the serious allegations of sexual assault by the Applicant on the prosecutrix, aged 19 years, however, the trial of the Applicant was expedited.

8] Learned Counsel for the Applicant stated that till date, the trial has not commenced and even charge has not been framed. It appears that because of certain applications which were filed by the Applicant seeking CCTV footage , there has been delay in commencement of the trial. Learned APP submits that the prosecution is ready to proceed with the matter as and when the same is taken up for trial.

9] Having regard to the serious allegations as against the applicant, this is not a fit case to enlarge the applicant on bail. Accordingly, the Bail Application stands rejected. However, the learned Trial Judge shall dispose off the case as expeditiously as possible and in any event on or before December 2019.

10] It is made clear that the observations made herein are prima-facie and the learned Judge shall decide the case on its own merits, in accordance with law uninfluenced by the observations made in this order .

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)