

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2177 OF 2018

Sadikain @ Munna Akbar Ahmed, Age 44 years,
R/o.At Classic Sonal Society, B/503,
Near GCC Club, Hatkesh, Kashimira,
Mira Road (East), District Thane
(At present in Thane Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mrs.Sonal Parab with Kiran Varma I/by Rajeev Sawant & Associates
for applicant.

Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd October 2018

PC :

1. The applicant is arrested on 10th December 2017 in connection with CR No.I-379 of 2017 registered with Nayanagar Police Station for offences punishable under Sections 323, 376 of Indian Penal Code. The FIR was registered on 10th December 2017.

2. The case of prosecution is that the complainant was taking tuitions of the daughter of applicant-accused since July-2016 and resides in the same vicinity as the applicant at Mira Road. In December-2017 she borrowed Rs.1,000/- as financial assistance from the applicant and assured that the amount would be returned after she receives her salary. On 9th December 2017 the complainant received call from the applicant and he informed her that he is willing to spend Rs.1,50,000/- with a view to conduct private

coaching classes by the complainant. He also stated that his friends would also invest the money by way of partnership. He further represented that to discuss about the said issue meeting has been arranged at 9 pm at Antapura Hotel. In view of the information provided by the applicant-accused, the complainant reached near Antapura Lodge at about 8 pm. She was informed that his friends who are willing to provide financial assistance for starting coaching classes, are sitting in the room of the said hotel. She was informed that she should accompany him for discussion. Hence, the complainant accompanied the applicant and entered in room no.103. However, it was noticed that no other person was sitting in the room. As soon as complainant entered the room, the applicant-accused closed the door and informed her that he is in love with her since last six years but could not express himself. He slapped her and forcefully removed her clothes and committed sexual intercourse with her. The complainant lodged the FIR with aforesaid police station on 10th December 2017.

3. The applicant was arrested and investigation proceeded. Statements of various persons including the staff of Antapura Lodge were recorded. On completing the investigation charge sheet was filed. The applicant preferred applications for bail before the Court of Sessions at Thane. The applications were rejected on 9th January 2018, 23rd March 2018 and 25th June 2018.

4. Learned advocate for applicant submitted that the applicant has been falsely implicated in this case. The first informant has conveniently suppressed the fact that there were cordial relations between the applicant and the first informant. The physical

relationship was consensual. The act was voluntary and no force or coercion of any nature was applied by the applicant-accused. There has been unexplained delay of 12 hours after occurrence of the incident in lodging the FIR. It is further submitted that the FIR has been lodged at the instance of her by her friend, who got to know about the relationship between the applicant and complainant. It is further submitted that the complainant had borrowed money from the applicant and to avoid return of money, she has filed a false complaint against the applicant. It is further submitted that the complainant is of major age and was fully aware of the consequences when she decided to meet the applicant in the hotel/lodge and there arose physical intimacy between them. It is submitted that the incident took place between 8.15 pm and 9.15 pm. The CCTV footage shows that the applicant and the complainant were in the hotel premises for a long period of time. The said circumstance speaks volumes about authenticity of the complaint of the complainant. It is submitted that the allegation made by the complainant about forcibly removing her clothes and committing sexual intercourse is fictitious and difficult to believe. It is submitted that while making entry into the hotel, the identity card proof was submitted by the complainant which carries a fake address and the investigating agency has collected the CDR of the applicant-accused which depicts that the complainant has made first call at 2.32 pm and its duration was for 25 minutes. It is further submitted that there is contradiction in the FIR and the supplementary statement of complainant. In the FIR she has stated that she reached at Antapura Lodge on her own, however, in the supplementary statement, it was stated that she had telephonic conversation with the applicant who picked up her at two wheeler and both of them reached the hotel.

The glaring contradictions speaks volumes of doubt about the genuineness of the complaint. The circumstances clearly depict that relationship was consensual and the complainant had made out fabricated story alleging offence of rape. The applicant is in custody from the date of arrest. Investigation is completed and charge sheet is filed. Further detention of the applicant is not necessary. Hence, he should be granted bail.

5. Learned APP submitted that crime is serious. The relationship was not consensual. The accused gave false information to the complainant and induced her to visit the hotel premises. The accused had represented that he along with his friends are interested in arranging finance for coaching classes to be conducted by the complainant and believing the representations and the fact that friends of the applicant are joining the discussion in the hotel room, she had accompanied the accused. The FIR clearly mentions that sexual assault was forceful and not consensual. The medical evidence supports the case of prosecutrix. It is therefore submitted that the application for bail was rejected.

6. I have scrutinized the documents on record. On completing investigation charge sheet has been filed. The applicant is in custody from 10th December 2017. The case of complainant is that she was acquainted with the applicant as his daughter was taking tuitions from the complainant. There is contradiction in the FIR and the supplementary statement of complainant as referred to hereinabove. There is also contradiction in the aforesaid statement and history provided to the medical officer during examination of the complainant. In the medical history it is stated that the accused had

clicked half naked photos of the complainant and thereafter she was dropped at bus stop by the accused. The statement of the manager of Antapura Lodge was recorded on 11th December 2017. He has stated that on 9th December 2017 at about 8.15 pm, the victim was accompanied by one person. The said witness verified the entries in the register which indicates that the complainant and the accused had visited the hotel at 8.15 pm and they left at about 9.15 pm. They were provided room no.103 which is apparent from the entries made in the register. He also stated that the name of the victim was given as Zoya Imran Siddiqui having address of Global City Road, Yazu Park, District Palghar. The Aadhar card of the victim was provided for the aforesaid name. The accused also provided the photograph of his Aadhar card. Thus, the entry in the hotel room was made by providing false name and false address of the victim. They were in the hotel from 8.15 pm to 9.15 pm. The statement of the friend of the complainant namely Faiz has not been recorded. In her supplementary statement, the complainant has stated that Faiz is not traceable. The statement of waiter of the hotel was recorded during the course of investigation wherein he has stated that the victim and accused had visited the hotel at 8.15 pm. They entered in the room no.103. The said witness had served them food and both of them left the hotel at 9.15 pm. The statement of another witness from the hotel namely Bimlesh Yadav was recorded who has reiterated the version of other witnesses. The said witnesses have not stated that the complainant was in disturbed state of mind or had lodged protest after the incident of rape. On the contrary they have stated that for about one hour she was accompanying the accused in the room and after that both of them left the hotel. Taking into consideration totality of circumstances it appears prima

facie that the relationship was consensual. Further detention of the applicant is not necessary as investigation is completed and charge sheet is filed. It is, however, clarified that the observations made in this order are prima facie for considering this application and the Trial Court shall not be influenced by same at the time of trial.

7. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed;
- (ii) The applicant is directed to be released on bail in CR No.I-379 of 2017 registered with Naya Nagar Police Station 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 a period of six weeks;
- (iv) The applicant shall attend Naya Nagar Police Station once in a month on first Monday between 10 am to 12 noon till further order;
- (v) The applicant shall attend the Trial Court on every date of hearing, unless exempted by the Court;
- (vi) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;
- (vii) The application stands disposed off.

(PRAKASH D. NAIK, J.)

MST