

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2280 OF 2018

Manohar Lakhasingh Lulla, Age 62 years,
Occ.Business,R/o.Room No.106, RLA Tower,
Opp.United Bank, Tank Road,
Bhandup, Mumbai

Applicant

versus

1. The Senior Inspector of Police,
Bhandup Police Station, Mumbai.
2. The State of Maharashtra

Respondents

WITH

CRIMINAL BAIL APPLICATION NO.1617 OF 2018

Mukesh Lakshmandas Kalra, Age 60 years,
R/o.Room No.895, Building No.44,
Azad Nagar 3, Andheri West, Mumbai.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Rizwan Merchant I/by Mr.Swapnil Wagh with Lochan Chandka
for applicant in BA No.2280 of 2018.

Mr.Abhinav Chandrachud I/by Premkumar R. Pandey for applicant
in BA No.1617 of 2018.

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

Mr.Gokul D. Bhoi, API, Bhandup Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th December 2018

PC :

1. The applicants have preferred these applications for bail under Section 430 of Code of Criminal Procedure, 1973. The applicants were arrested on 24th January 2018. The FIR was lodged on 23rd January 2018 for offences punishable under Sections 376(5)(d), 506(2) r/w 34 of Indian Penal Code.

2. The prosecution case is that in September-2017 one Mannu Lallu told the prosecutrix that he is giving her good job at garment shop and he will pay Rs.10,000/- salary. Thereafter the victim was taken to an isolated cloth factory at around 2 pm in September-2017 and the accused Mannu Lallu had forceful sexual intercourse with her. He also threatened her that she shall not inform the said incident to any person and on account of threat she did not report the said incident to any person. In the FIR it is further alleged that after a period of eight days the accused Mannu Lallu called her at his residence. He threatened her that she will be removed from employment if she does not accede to his request. Hence she proceeded to the residence of the said accused. At that time friend of Mannu namely Mukesh had also came to the premises of Mannu. Thereafter both of them consumed liquor and after threatening the complainant, they had sexual intercourse with her. Somewhere in October-2017, she got some symptoms of vomiting etc and hence she took medicines. On 30th December 2017 she had undergone sonography and it was detected that she was pregnant for 13 weeks. Hence, according to the complainant, she lodged the FIR on 23rd January 2018. Pursuant to that medical examination was carried out. Subsequent statement of the victim was also recorded on 25th January 2018. In the said statement the victim has stated that both the accused have indulged in sexual intercourse with her on both the occasions. During the course of medical examination history was provided to the doctor which was reflected in the subsequent statement. The statement of victim was recorded under Section 164 of Code of Criminal Procedure, 1973 on 14th February 2018 by Metropolitan Magistrate which was also explained to her and in the

said statement she has stated that two boys from the company have given her something. There is case of rape and when she went to demand money, she was threatened. Police case was registered. She has no parents in her house. She was pregnant and had undergone abortion. Subsequently statements of other witnesses were recorded and on completing the investigation, charge sheet is filed.

3. Learned counsel Mr.Merchant for applicant in Bail Application No.2280 of 2018 submitted that there has been inordinate delay of five months in lodging the FIR. The alleged incidents had occurred in September-2017 whereas the FIR was lodged on 23rd January 2018. It is further submitted that from the tenor of the FIR it is apparent that the reason for lodging the complaint is that she was pregnant and could not undergo abortion. It is further submitted that the victim has given contradictory versions in the supplementary statement recorded on 25th January 2018 and the medical history provided to the doctor at the time of medical examination. In her subsequent version she has given a different story alleging that the accused had sexually assaulted her on two occasions which defers her earlier version given in the statement. It is further submitted that DNA report obtained by investigating machinery completely exonerates the applicant being responsible for having sexual relationship with the victim. The complaint and the statements as well as medical history provided by the applicant, do not specify the dates of incidents and allegations mentioned therein are vague in nature. It is further submitted that the applicant is in custody from the date of arrest. Investigation is completed and charge sheet is filed. Therefore, detention of the applicant is not necessary.

4. Learned counsel for applicant in Bail Application No.1617 of 2018 adopted the arguments advanced by learned counsel in other application. In addition to that it is submitted that the medical report indicates that the victim was suffering from schizophrenia and there is every likelihood of she has falsely implicated the accused by giving different versions. It is submitted that merely on account of DNA report the applicant cannot be subjected to custody and cannot be said that he is responsible for commission of offence as alleged against him. The version of the complainant clearly depicts that although the incident had occurred in September-2017, the FIR was lodged on 23rd January 2018 and the reason which is mentioned therein is that she did not succeed in undergoing abortion. Thus it is submitted that apparently the alleged incident of sexual assault was consensual. It is, therefore, prayed that the applicant be released on bail.

5. Learned APP submitted that the version of the complainant reflected in the FIR and her statements attributed overt act to the applicants having committed sexual intercourse. The statements of the witnesses also indicate that place of incident was remaining closed on Sundays. The victim has not specified the date of incident and therefore there is every possibility that the alleged incident of sexual assault must have taken place on the date when nobody was present at the place of incident. The medical evidence indicates that the victim was pregnant. DNA report supports the case of prosecution qua the accused in Bail Application No.1617 of 2018. It is submitted that assuming that the victim was suffering from some mental illness, the accused had taken undue advantage and committed sexual intercourse. He drew my attention to the

statements of witnesses and also pointed out the statement of her employer who stated that in the past there was no such incident. The applicants had threatened the victim and as a result of the threat she did not lodge the complaint on the earlier occasion. He, therefore, prayed that the applications be rejected.

6. I have perused the FIR and other material which is part of the charge sheet. It is apparent from the FIR that first incident had occurred in September-2017 where it is alleged that the applicant in Bail Application No.2280 of 2018 had promised her a job and took her to the place of incident and had committed sexual intercourse. The second alleged incident as spelt out in the FIR had occurred eight days after the occurrence of first incident wherein it is alleged that both the accused had sexual intercourse. It is pertinent to note that in her subsequent statement recorded on 25th January 2018 as well as medical history given by her, there is variation in her version vis-a-vis alleged sexual assault. She has referred to both accused having sexually assaulted her on both days of incidents. It is also apparent that the incident as alleged had occurred in September-2017 and the FIR was lodged on 23rd January 2018. From the version of the victim appearing in the FIR it is apparent that she tried to undergo abortion, she did not succeed and then she proceeded to police station and lodged the FIR. It is also relevant to note that the statement of the victim was recorded u/s 164 of Cr.P.C which is completely silent with regards to the role played by the applicants. Even the names of applicants are not referred. Endorsement appearing on the said statement indicate that the deponent was explained her statement in the language known to her. The statement is absolutely silent with regards to the alleged sexual

intercourse committed by the applicants. In the light of nature of aforesaid evidence and considering the fact that applicants are in custody from 24th January 2018 and on completing the investigation charge sheet is filed, case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2280 of 2018 and Criminal Bail Application No.1617 of 2018 are allowed and disposed off;
- (ii) The applicants are directed to be released on bail in connection with CR No.44 of 2018 registered with Bhandup Police Station, Mumbai, on furnishing PR bond in the sum of Rs.50,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall report Bhandup Police Station once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (iv) The applicants shall not tamper with the evidence and shall attend the Trial Court regularly on the date of hearing of the case, unless exempted by the Trial Court;
- (v) The applicants are permitted to furnish cash security in the sum of Rs.50,000/- each for a period of four weeks;

8. It is clarified that observations made in this order are prima facie for considering the bail application and the Trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)