

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

CRIMINAL BAIL APPLICATION NO.2638 OF 2018

Shreyas Dike & Ors.

.. Applicants

Vs.

State of Maharashtra

.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO.2311 OF 2018**

Riddhesh Buddhivan Dhuri

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Ms.Tripti R. Shetty, Advocate for the Applicant in BA.2638 of 2018.

Mr.Pranav D. Avhah, Advocate for the Applicant in B.A.2311 of 2018.

Mrs.Geeta P. Mulekar, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 13, 2018.

P.C. :

Applicants in both these applications are seeking bail in connection with Section 439 of Code of Criminal Procedure. The FIR was registered vide C.R.No.44 of 2018, for the offences punishable under Sections 376(i), 376(n), 377, 358, 354(D), 509,

506 and 504 read with 34 of Indian Penal Code (“IPC”, for short), and under Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”, for short) as well as Sections 66(E) and 67(B) of Information Technology Act (“IT Act”, for short). Victim is aged about 15 years on 3rd February, 2018.

2 The case of the prosecution is as follows:

- (a) The complainant had finished her 9th standard examination in May 2017 and there were holidays, she was playing with her friend Aditi outside the house at around 1:30 p.m.
- (b) It is alleged that the accused no.1 invited the complainant house of accused no.2 and hence the complainant went there with her friend Aditi. Accused nos.1 and 2 asked Aditi to go back and when the complainant inquired, they told that they want to show her something alone.
- (c) Accused no.1 showed some pornography video to the complainant. Accused no.1 asked accused no.2 to go out of the house and alert him if someone is coming. Accused no.2 asked the complainant to remove her clothes.

Complainant refused to do so. Accused no.1 forced himself upon her and had physical relationship with her. Accused no.1's grandmother came searching for him. Accused no.1 wore his clothes and asked the complainant to wear her clothes and hide on mezanine.

- (d) It is alleged that his grandmother came inside the house. Accused told that they were playing and told the grandmother to go back. When she went back, accused asked the complainant to come down. Accused no.2 came inside the house and accused no.1 went out. Accused no.2 then raped the complainant. Accused changed the bedsheet and asked the complainant to go back to her house. Complainant went back to house and cried a lot but did not tell her mother anything, as she was scared.
- (e) On the next day, accused no.4 met the complainant at around 7:30 p.m., and told her that he want to have sex with her. Accused no.4 asked her to come at Bhairav's house. When they went there, Bhairav went outside the house. Accused no.4 raped the complainant. Accused no.4 used to go to the complainant's house to meet her brother

and use to threaten the complainant that if she did not have sex with him, he shall show the video to others.

- (f) In May 2017, accused no.4 took the complainant to Aditi's house, as he was in possession of the keys and raped her.
- (g) One day in June 2017 at about 1:00 p.m., accused no.4 met the complainant and threatened her that they are in possession of the video and if she does not have sex with him, then, he will show the video to everyone. The complainant requested him not to do so.
- (h) It is alleged that in June 2017, accused no.3 asked the complainant to visit him for studying maths. When she went to his place, he threatened her to show the video and raped her.
- (i) In July 2017, when the complainant was returning from tuition at around 8:30 p.m., accused no.5 came to her and told her that he has seen her video and want to get physical with her. He took her to the bathroom and raped her.

- (j) In July 2017, accused Mayuresh went outside the complainant's house and told her that he has seen her video and that she should allow him to get physical with her otherwise he will tell his family. He took her to his place at 2:00 p.m., and raped her.
- (k) In August 2017, when the complainant was going to some shop, a boy came and told her that he is accused no.3's friend and he has sent him to her and he has seen her video and wanted to do the same with her. He took her to Nitin's house. Nitin was sitting outside. Accused Bharat took her inside and raped her.
- (l) Accused Nitin came in the house. The complainant knew Nitin and requested him not to do such thing with her. Accused Nitin told her that he will not do anything with her. Accused Nitin touched her chest and kissed her and told her to go home.
- (m) In august, 2017, accused Bharat took the complainant to Nitin's house and forcefully had sex with her. Accused

Nitin was standing outside and Bharat asked him to keep a watch if someone comes.

- (n) In November, 2017, accused no.4 met the complainant and asked her to come with him. When she refused, he started abusing her and threatening her that he shall tell about the video to her family. Complainant got scared and went with him to Aditi's house. Accused nos. 1 to 3 were also present there. They raped her one by one.
- (o) In November 2017, accused no. 2 threatened and raped the complainant on two consecutive days.
- (p) Accused use to chase the complainant. Complainant went to vile Parle on 26th January, 2018, for Haldi Kumkum function. There one person named Mayur Suryakant Chavan came and told her that he knows that the complainant is a prostitute and he want to get physical with her and started forcing himself on her. Complainant got scared and told him that she will meet him latter and went away from there.

- (q) On 29th January, 2018, complainant told Vishal Patil everything who told her mother about sexual abuse of victim. When Vishal Patil went and spoke to all boys, fight took place between them.
- (r) On 3rd February, 2018, First Information Report (“FIR”, for short) No.44 of 2018, registered at Vile Parle Police Station, Mumbai.

3 The applicants had preferred application for bail before the Sessions Court, which were rejected.

4 Learned counsel for the applicants in both these applications have submitted that applicants are falsely implicated in this case. There is delay in lodging the FIR. It is further submitted that applicant nos. 1 to 4 in Bail Application No.2638 of 2018, were arrested on 3rd February, 2018, and applicant no.5 was arrested on 5th February, 2018. It is further submitted that the co-accused was granted bail by this Court vide Bail Application No.2199 of 2018 and 1247 of 2018. It is further submitted that the version of the complainant was doubtful. She did not complain for a period of one year. She was residing with

the family members, but, the incident was not disclosed to them. It is submitted that considering the seriousness of the alleged incident, it was expected that the complainant would disclose the incident to some person, which was not done. It is submitted that the uncle of the complainant, who has sworn the affidavit has stated that the behavior of the complainant was normal. It is submitted that the accused Nitin Pangale, who has allegedly committed the crime has been granted bail by this Court. Applicant no.1 was not present in the area where the alleged incident had occurred during the period of the alleged factual aspect, as he was at his village. It is however submitted that accused nos.1, 2 and 3 are residing in joint family consisting of other members in a small chawl and the toilets are located in the common passage and which is heavily located. It is further submitted that the circumstances on record indicate that the case of the complainant was false, frivolous and the version is concocted. It is submitted that during the period of the alleged incident, the behavior of the complainant was not found to be abnormal, or it was not noticed that she was in a disturbed state of mind. The applicants had relied upon several documents, which are annexed to this application in support of their statements that the applicants are falsely implicated in this case.

It is submitted that the applicant in Bail Application No.2311 of 2018, has been falsely implicated on account of his acquaintance with political party. It is submitted that as he is a respectable person, and, there are no antecedents against him. It is submitted that according to the complainant, she was sexually assaulted repeatedly during the period enumerated in the FIR. However, the medical evidence does not support the allegations spelt out in the FIR. Medical evidence is not in consonance with the version of the complainant. The medical case paper does not indicate any injuries on the person of the complainant. It is submitted that if the version of the complainant, as alleged in the FIR, was to be considered as truth that there should be corresponding injuries on her person. Applicants are in custody from the date of arrest and further detention of the applicants is not necessary.

5 Learned APP submitted that the applicants are involved in serious crime. At the time of lodging FIR, the victim was 15 years and the incident of sexual assault had occurred repeatedly during the period of one year. It is submitted that the complainant in her statement has attributed specific overtact to all the applicants having sexually assaulted her. It is submitted that the acts attributed to the applicant-accused were committed

under threats. She was threatened that the video recording of the alleged act would be made viral and the accused committed sexual assault with the complainant. It is submitted that at this stage the version of the complainant, which gives minute details about manner in which the incident occurred and the manner in which she was sexually abused by all the accused, cannot be brushed aside. It is further submitted that there is no reason for the complainant to falsely implicate the applicants-accused. They are named in the FIR with narration of acts committed by them. It is further submitted that the victim was minor at the time of the alleged incident had occurred, and, therefore, the offence under Section 376 of IPC, is clearly made out in the complaint lodged by the victim.

6 It is, therefore, submitted that the application preferred by the applicants may be rejected.

7 Having heard both the sides. I have perused the documents on record. The investigation has been completed and the charge-sheet has been filed. The primary contention of the applicants is that they are falsely implicated in this case. It is contended that there is contradiction between the statement of

the complainant and the medical evidence. On perusal of the FIR, it is apparent that right from May 2017 onwards, the complainant is sexually assaulted by the accused, repeatedly. As per the version of the complainant, applicant no.1 in B.A.No.2638 of 2018, had committed sexual intercourse with her. It is alleged that the said accused has shown her some pornography video, and, thereafter, committed sexual intercourse with the victim. Admittedly, the victim was minor at the time of the said incident. FIR further discloses that all other applicants then threatened the complainant/victim that the video of the incident of sexual assault recorded will be shown to other persons and time to time all of them had committed sexual intercourse with her. The details of the manner in which the complainant was sexually assaulted are reflected in the FIR. The complainant's has also alleged that the accused had subjected her to unnatural sex and she was ravished on several occasions during the said period, as stated in the FIR. Complainant has given detailed version as to time and the manner in which and who has committed the sexual intercourse with her under coercion. In the light of the detailed version of the complainant attributing specific overtact to the accused-applicant, her version cannot be brushed aside, at this stage. The complainant was minor at the time of incident. Prosecution case

is that the accused have committed heinous crime, and, has repeatedly sexually assaulted her. The medical examination of the complainant was, however, conducted subsequently after alleged incident and after lodging of the FIR. At this stage, assuming that the medical evidence does not give details about the injuries sustained by the complainant, the version reflected in the FIR cannot be disbelieved as it would be matter of evidence at the time of trial. The other contentions of the applicants that they are falsely implicated and the grounds raised in both these applications are matter of evidence, and, cannot be considered, at this stage. The co-accused were granted bail on the basis of the role attributed to them. They had not committed sexual intercourse and the allegation against them was attributing the charge under Section 354 of IPC. Taking into consideration the totality of the circumstances, there is no reason to disbelieve the contents of the FIR, which depicts the manner in which the complainant was repeatedly sexually abused by the accused. Even, at the time of lodging FIR, she was minor. In the circumstances, I do not find that case for grant of bail is made out, and, hence, this Bail Applications are rejected.

:: ORDER ::

- (i) Bail Application No.2638 of 2018 and 2311 of 2018, are rejected and disposed off.

(PRAKASH D. NAIK, J.)