

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 2783 OF 2018**

Waris Fakhruddin Qureshi

...Applicant

V/s.

The State of Maharashtra

...Respondent

* * * * *

Mr. Sanjeev P. Kadam a/w. Mr. Prashant P. Raul i/by. Mr.
Bhanudas L. Jagtap, Advocate for the applicant.

Mr. H.J. Dedhia, APP for the respondent-State.

Coram : Sandeep K. Shinde, J.

Friday, 21st December, 2018.

P.C. :

1. It is an application under Section 439 Criminal Procedure Code in Sessions Case No. 167 of 2018 arising from C.R. No. 171 of 2018 registered with Malvani Police Station for the offences punishable under Sections 372(2) (1) and 506 of the Indian Penal Code.

2. Heard learned Counsel for the applicant and learned APP for the State.

3. The complainant is 21 years old. She is residing with her grand-mother and step-brothers. She lived with her husband only for twelve days and on account of differences between them, she withdrew herself from his company four years before the alleged incident. It is alleged that, her step brother (applicant herein) sexually assaulted her against her wish and threatened her with dire consequences if she would disclose the incident to anyone. Thus, the complaint was filed ten days after the date of the incident.

4. The learned Counsel for the applicant has drawn my attention to Medico Legal examination report dated 22nd February, 2018. She had narrated the incident to Officer, alleging that she was sexually assaulted by the applicant, by Armaan, Arbaaz and two other persons. She had also disclosed that, she was recurringly sexually assaulted by the friends of her step-brothers since last three years. It appears, that on 25th May, 2018 her supplementary statement was recorded, wherein she withdrew the allegations against Armaan, Arbaaz and two of his friends. Besides, the learned Counsel has also invited my attention

to the statement of the victim recorded on 15th June, 2018 under Section 164(5) Criminal Procedure Code by the learned Magistrate. This statement shows that, she had not disclosed any facts to the learned Magistrate on 15th June, 2018. She was again called by the learned Magistrate for recording the statement on 20th June, 2018 but she did not narrate and/or disclose any facts to the Magistrate.

5. The learned APP has submitted that there is sufficient evidence on record to indicate that the victims were sexually assaulted and he further submits that there is no reason to disbelieve the statement of the victim at this stage.

6. I have considered the arguments of the learned APP. It may be stated that, the victim's statement to the Medical Officers cannot be ignored but at the same time her supplementary statement dated 25th March, 2018 also cannot be overlooked. Vide this supplementary statement, she has withdrawn the allegations made by her against Armaan, Arbaaz and her two friends. She was afforded one more opportunity by the learned Magistrate when she was called for recording the statement under Section 164(5)

Cr.P.C. Even at that point of time, she did not disclose anything about the incident. This conduct of the victim cast shadow on her version.

6. Thus, taking into consideration the evidence on record, I am of the view that, a case is made out for granting bail to the applicant and hence the following order :

O R D E R

- (i) The application is allowed.*
- (ii) The applicant is directed to be released on bail on he executing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount before the learned Sessions Judge in Sessions Case No. 167 of 2018.*
- (iii) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.*
- (iii) Application stands disposed off accordingly.*

(SANDEEP K. SHINDE, J)