

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

CRIMINAL BAIL APPLICATION NO. 3103 OF 2018

Vishwas Parshuram Bhogle	... Applicant
Vs.	
The State of Maharashtra	... Respondent

...

Mr. Viresh Purwant for the applicant.
Mr. S.R. Agarkar, APP for the Respondent-State.

...
CORAM : PRAKASH D. NAIK, J.
DATE : 20th DECEMBER, 2018.

P.C.

1. This is an application for bail under Section 439 of Code of Criminal Procedure in connection with CR No. I-374 of 2018 registered with Kalwa Police Station for offence punishable under Section 376, 342, 506 Part II of Indian Penal Code.
2. The prosecution case is that complainant is 32 years old married lady. She is residing at Kalwa alongwith her husband and having two sons. Since, 2006 her husband is doing work of labour on construction site. The complainant knows the applicant since 2006. Applicant/accused is also married person. The husband of the complainant and the applicant are friends. They used to visit each other house. Sometime, the applicant used to provide construction work to the complainant husband. Applicant used to

stare at complainant with evil intention and used to misbehave with her. In January, 2017, the complainant alongwith her son had been to market, the applicant approached her and took her to one room in a building at Gaondevi Temple under the pretext of talking to her. Elder son of the complainant was with her. The applicant threatened the complainant if she refused to have physical relations with him stating that he would stop giving work to her husband and would make them starve and also cause harm to her children. The accused locked complainant's son in bathroom and committed sexual intercourse with her. Thereafter in May, 2018, the applicant had sexual intercourse with the complainant at the lodge. Thereafter, the applicant threatened, the complainant and insisted that she should accompany him. On 12th October, 2018 at about 7.30 p.m. the applicant had entered into the house of the complainant, he sent her son to his house for studies. The applicant locked the door and had sexual intercourse with her. The children knocked the door and hence, the applicant left the place. The husband of the complainant made inquiries and hence she had disclosed the aforesaid incident to her husband and thereafter FIR was lodged on 14th October, 2018. The applicant was arrested on 14th October, 2018 he was produced before the

concerned Court for remand. Initially he was remanded to police custody and thereafter to judicial custody. The applicant preferred an application for bail before the Sessions Court which has been rejected by order dated 1st November, 2018.

3. Learned counsel for the applicant submitted that the case is false and frivolous. The contents of the FIR indicate that the applicant and complainant were acquainted with each other since 2006 and there is strong cordial relationship between both the families. The tenor of the FIR also shows that there was sexual relationship between them. The complainant never complained about earlier incident to her husband or any other person. First Incident took place in January, 2017, the complaint was lodged in October, 2018. The facts narrated in the FIR itself creates doubt about the version of the complainant. The applicant is in custody since his arrest. Presently, he is in judicial custody.

4. Learned APP submitted that this cannot be termed as consensual relationship. First incident refers to act of locking the complainant's son in the bathroom and having physical relationship with the complainant. The FIR also shows that the victim was forced to have physical relationship under coercion. The statement of the victim is also recorded under Section 164 of

Code of Criminal Procedure which confirms her version in the FIR.

It is therefore submitted that the application for bail be rejected.

5. First Information Report was lodged on 14th October, 2018.

The family of the complainant and the accused were known to each other since 2006. The husband of the complainant and the applicant had friendly relationship. The applicant used to provide work to complainant's husband. The first incident as alleged in the FIR had occurred in January, 2017. It is alleged that her son had accompanied her and he was locked in a bathroom and thereafter the accused have committed sexual intercourse. There was no complaint by her almost for a period of two years. It was alleged that the complainant was taken to some room where the applicant had committed the alleged act and also locked her son. The details of the events are not reflected in the First Information Report. Second incident had occurred in May, 2018 wherein the accused had physical relationship with the complainant in lodge. Second incident had allegedly occurred after a period of about one and half year from the first incident as alleged in the FIR. The second incident is of 12th October, 2018 wherein sons of the complainant were sent to the house of the applicant and thereafter she was allegedly sexually assaulted. Considering the nature of

allegations reflected in the First Information Report, it appears to be consensual relationship. Applicant has been in custody from the date of arrest. There is no need of further custody of the applicant. Hence, the case for grant of bail is made out.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No.I-374 of 2018 registered with Kalwa Police Station on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant shall report the concerned police station once in a month on first Saturday of every month between 11 a.m. to 1 p.m. till further orders;
- iv. Applicant shall not tamper with the prosecution witness;
- v. Applicant shall attend the dates of hearing before the Trial Court, unless exempted by the Court;
- vii. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)