

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 95 OF 2019

SHAGUN ACHUT GHADI

... Applicant

Versus

POLICE INSPECTOR, WOMEN'S POLICE STATION PANAJI AND
ANOTEHR.

... Respondents

Shri Arun Bras De Sa, Advocate for the r the applicant.

Shri Pravin N. Faldessai, Additional Public Prosecutor for the
respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 12th April 2019

P.C.:

1. The applicant seeks for bail in anticipation of arrest under Section 438 Cr.P.C. which is coming up for disposal today.
2. Heard Shri Arun Bras De Sa, learned Advocate for the applicant who submitted that he was roped in the alleged commission of the offences punishable under Sections 343, 376 and 506(ii) IPC amongst others. He referred to the reply filed on behalf of the State and submitted that it was relevant to note that the alleged incident had taken place somewhere between 22/02/2019 and 27/02/2019 while the offence was registered only on 05/03/2019 after due

meditation in the matter. A missing report was initially filed on 26/02/2019 and that too after four days reporting that the victim was missing from 22/02/2019. He referred to the letter addressed to the Superintendent of Police North Goa, Panaji dated 28/02/2019 indicating that the victim was traced on 27/02/2019 when her detailed statement was recorded in which she had clearly indicated that she has no complaints against anyone and she had willingly got married with her boyfriend S. Harmalkar. The report also did not make any reference to the incident of rape on 22/02/2019.

3. Shri De Sa, learned Advocate referred to his application for bail to substantiate his case that the victim girl had willingly gone with him on 24/02/2019 and had spent a night with him and thereafter he had dropped her on the way at her request. He had also lodged a counter complaint in the office of the Director General of Police since it was not entertained at the Police Station and in which too he had clearly spelt out that the victim had voluntarily come to him and offered to meet him and thereafter had spent some time together including a night. He had received a call from PSI Desai requesting him to visit the Police Station and according he gone there and made inquiry with the concerned duty officer who inquired about the victim

girl and thereafter directed him to call the victim on her mobile and to impress on her to go to her residence. The learned Additional Sessions Judge had passed the order rejecting the bail application without any justifiable reasons. It was all a cooked up story against him and therefore he had to be secured with the order of bail in anticipation of arrest. He place reliance in **X v/s. State of Telangana and another** [(2018) 16 SCC 511] in support of his case.

4. Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State submitted that a reference to the character of the victim was irrelevant since it was submitted by Shri De Sa, learned Advocate for the applicant that she had a previous history of going away from her house and being reported missing on earlier occasions. He referred to the statement of the victim recorded on 05/03/2019 in great detail and submitted that it clearly indicated that she was subjected to forcible sexual intercourse and exploitation at the hands of the applicant and his accomplices/friends and therefore the offences particularly under Section 376 and 370 IPC were clearly attracted to the case at hand. The applicant was threatening the victim with disclosure of her nude photographs and

making them viral and as such it was necessary to attach the mobile phone of the applicant and besides the vehicle used in the crime. The other submission was that the applicant was not available and traceable and so too his accomplices and considering the seriousness of the crime, he was not entitled to bail in anticipation of arrest. There was a clear planning in the entire crime and it could not at all be said that it was a stray incident of aberration of the victim to go with the applicant but that she was forced into sexual exploitation by the applicant and also his accomplices and induced in the flesh trade. The application was devoid of any merits and had to be dismissed.

5. i have heard Shri De Sa, learned Advocate for the applicant, considered the judgment in **X v/s. State of Telangana** (supra) and more particularly perused the records of investigation. In the light thereof, i would now decide the application accordingly.

6. In **X v/s. State of Telangana**(supra), the complainant had alleged that the accused had made false promise of marriage to her and sexually exploited her continuously. The High Court granted bail to the accused under Section 439 CrPC since the circumstances were

indicating consensual relationship between the complainant and the accused. However, it was found that there was no supervening circumstance made out to warrant the cancellation of bail. There was no cogent material to indicate that the accused was guilty of conduct which would warrant his being deprived of his liberty. Nonetheless looking to the nature of the charges and the fact and circumstances, the quantum of personal bond was enhanced to ₹10,00,000/- from ₹50,000/-. The Apex Court reiterated the well settled principle that rejection of bail in a non-bailable case at the initial stage and cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted. This judgment is clearly distinguishable on facts and cannot buttress the case of the applicant atleast at this stage. Hence, the respectful departure.

7. I have examined the complaint though belated which refers to the incident allegedly narrated by the victim to her mother and based on which she had set the law in motion against the applicant and others. It is the statement of the victim which is material from which it is apparent that although the victim did have episodes of

sexual escapade with the applicant, nonetheless it is clearly reflected from the tenor of her statement that the applicant that thereafter he had tried to blackmail her and threatened her with making her nude photographs viral and that he would expose the videos which he had taken often. It is revealed from her statement that she was virtually compelled to meet the applicant under threats and intimidation that he would circulate her nude and other photographs and make them viral and in those set of circumstances had she gone alongwith the applicant. He was instrumental in calling one of his friends and thereafter not only the applicant had forcible sexual intercourse with her on a number of occasions but that he had prevailed on his friends and who too had forced themselves on her and had sexual intercourse with her. The testimony further goes on at length to indicate that the applicant had called some other accomplices and each of them had taken turns to force themselves on her sexually on payment of money to the applicant and the others taking turns to keep a check on her. In other words it indicates in no uncertain terms that the applicant was instrumental in prevailing on her to withhold the information that she was with him and instead to convey to the police that she was married and she had no other

option but to fall in line with the threats and intimidation of the applicant.

8. The records also bear out that the statement of the victim was recorded by the JMFC, Bicholim under Section 164 in which she had once again reiterated her travails in the matter and that it is only after concurring with her family was she constrained to give her statement to the police against the applicant. The medical examination report of the victim reveals that she had given a history of forcible sexual intercourse on several occasions with different persons at the instance of the applicant and for money and that the applicant in particular had threatened to make her photographs viral in case she did not comply with his demands. The medical examination otherwise indicates that there was evidence of genital penetration like that in sexual intercourse on examination of the victim.

9. i have perused the other investigation records and from which it is apparent that a substantial part of the investigation is yet to be carried out pursuant to which the mobile phone purportedly used by the applicant apart from the vehicle are to be attached by the police.

The investigation is in progress and in the event the applicant is set at liberty, it is likely to result in vital evidence being lost to the prosecution. Moreover looking to the nature of the offences alleged against the applicant particularly under Section 376 and 370 IPC amongst others, i do not find it a fit case to order the release of the applicant on bail. The nature of the offence alleged against the applicant requires a thorough investigation and securing the applicant in anticipation of arrest would be counterproductive to the progress of the investigation. In the circumstances, i do not find any merit in the contention of Shri De Sa, learned Advocate for the applicant that it was a cooked up story at the instance of the victim to frame the applicant or that he was entitled to the benefit of bail in anticipation of arrest. The application is found devoid of merits and is accordingly dismissed.

NUTAN D. SARDESSAI,J.

mv