

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2476 OF 2019

Prashant Balasaheb Hogade ...Applicant

V/s.

The State of MaharashtraRespondent

Mr. Shirish Gupte, Senior Advocate a/w. Mr. Tejas Hilage, for the applicant.

Mr. J.S. Lohakare, APP for the State.

Investigating Officers, Mr. Rohan Patil, Ichalkaranji Police Station, Kolhapur and Ms. Rupali Patil, Shivaji Nagar Police Station present.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 10th December, 2019.

P.C. :

1. Heard.
2. Applicant is seeking his enlargement on bail in Crime No.142/2019 registered with Ichalkaranji Police Station, Kolhapur for the

offences punishable under Sections 376(d), 376, 354, 394, 462, 504, 506 read with Section 34 of the Indian Penal Code. There are five accused in the subject crime. The applicant came to be arrested on 7th June, 2019.

3. The investigation is over and the chargesheet has been filed.

4. In June, 2019 prosecutrix of thirty-one years old alleged, since 1999, the applicant and co-accused were sexually assaulting her. She narrated the incident of 2008 as to how she was sexually assaulted by the applicant and the co-accused. She alleged, applicant was instrumental in dissolving her marriage and husband deserted her in January, 2009. She has narrated the incident of sexual assault occurred in January, 2009 and since thereafter, applicant was repeatedly harassing and sexually assaulting her. Complainant reported, in March, 2017 she had an occasion to attend a birthday party hosted by Mahesh Mehta where she was sexually

exploited by the applicant and co-accused. It is reported, due to recurring assaults, threats and coercion, she suffered depression and attempted to commit suicide. She told police, after her attempt to commit suicide, she was treated by Dr. Saurabh Kulkarni. She reported in 2018, during Diwali, applicant and the co-accused Sanjay, Sunil and Pawan attempted to assault her sexually. It is therefore complainant's case that, since 2008 till 2019 repeatedly the applicant and the co-accused forced to submit herself to sexual desire of applicant and co-accused. On this expression, subject crime came to be registered against the applicant and other three persons.

5. Mr. Gupte, learned Senior Counsel for the applicant submitted in the complaint, she alleged, sexual assault by three accused persons in the birthday party hosted by Mr. Mehta in March 2017; however in supplementary statement she alleged sexual assault by three accused was committed in 2009.

6. The submission is, surprisingly since 2009 victim did not lodge complaint, but only after the local residents filed complaint against her for causing nuisance, the present complaint came to be lodged. Mr. Gupte, learned Senior Counsel has brought to my notice the, complaint/representation, dated 7th June, 2019 filed by about 30 local residents against the complainant for causing nuisance. Besides, pointed out there is a complaint filed by wife of the applicant, against the complainant in June, 2016.

. As against this, the learned APP submits, the representation/complaint, is signed by the residents at the instance of the Corporator, one of the accused in the crime. Learned APP, submits, one of the accused person is Corporator and leader of organised crime syndicate and he coerced, the local residents to lodge/file the complaint against the victim.

7. Be that as it may, evidence shows that,

there is a dispute over the property between the complainant and her relatives. A statement of witness Bhosale, fortifies this fact. Besides, mother of the complainant has also lodged a complaint, wherefrom it appears that her relative, one Vandana Bhosale was objecting/restraining her from taking electricity connection in the house.

8. Even assuming that the complaint by the local residents, was at the instance of and/or instigated by the accused-Corporator, however the fact remains, State has initiated "Chapter proceedings" under Section 107 of the Criminal Procedure Code against the applicant as is evident from the order dated 13th October, 2018 passed in Chapter Proceedings No. 324 of 2018. It may be stated, if victim's mother could lodge a complaint on a issue of electricity meter than, what prevented, victim to report incidents of sexual assault committed by the applicant and co-accused since last ten years. It is not answered. Mr. Gupte, has also invited my attention to the

statement of Dr. Kulkarni to whom the complainant was referred to, after she attempted to commit suicide. However, Mr. Kulkarni stated, complainant had not been to him for the treatment.

9. Thus, taking into consideration the evidence on record, a fact remains that since 2008 till 2019, the victim did not lodge the complaint against the applicant, though she was subjected to recurring sexual assault by the applicant and the co-accused. Infact, applicant is a free person and nothing prevented her from lodging the complaint.

10. Learned APP submits that the co-accused is a leader of organised crime and under his leadership, the applicant and accused have sexually-physically exploited the complainant for over more than ten years. She apprehends, if applicant is released on bail, he would harm the complainant and her family members. She submits, State has provided round-the-clock security to the applicant.

11. In view of the facts of the case and the evidence made available, case is made out for releasing the applicant on bail. The apprehension of the APP could be taken care of, by imposing stringent conditions. That since investigation is over and no criminal antecedents are brought to my notice as against the applicant, the applicant is directed to be released on bail. Hence, the following order :

ORDER

(i) The Bail Application is allowed.

(ii) The applicant is directed to be released on bail in Crime No.142/2019 registered with Ichalkaranji Police Station, Kolhapur on furnishing P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one or more sureties in the like amount.

(iii) The applicant shall file an Undertaking that

he shall not enter the limits of Kolhapur District till the charge is framed.

(iv) The learned Sessions Judge may impose such conditions on the applicant as he deems fit and proper once the charge is framed, in the interest of justice and victim.

(v) The applicant shall furnish the particulars of his residence outside the Kolhapur District to the Investigating Officer of the Police Station concerned including his mobile number within seven days from today;

(vi) State is directed to ensure no harm is caused to the victim, her mother and children and shall provide adequate security to her. Any attempt by the applicant directly or indirectly to influence victim or cause harm, shall be the ground available for cancellation of bail.

(vii) The applicant shall not tamper with the

evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(viii) It is made clear that the observations made herein are prima-facie and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. With the above directions, the Bail Application stands disposed off.

(SANDEEP K. SHINDE, J.)