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

BAIL APPLICATION No. 449 OF 2019

Kishor Dnyandeo Shelar

...Applicant

Vs.

State of Maharashtra

...Respondent

Mr. Satyavrat Joshi for Applicant

Smt. A.A. Takalkar, APP for the State/Respondent.

Mr. A.M. Jadhav- API (I.O.) Chinchwad Police Station.

CORAM : SARANG V. KOTWAL, J.

DATE : OCTOBER 14, 2019

P.C.:

1. The Applicant is seeking his release on bail in connection with C.R. No. 293 of 2018 registered with Wakad Police Station, Pune under Sections 394, 306 read with Sections 109, 116, 327, 354, 338, 427, 452, 506 and 511 of the Indian Penal Code. The Applicant was arrested on 8th April, 2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. The FIR is lodged on 6th April, 2018 by the victim herself. She has stated in her FIR that on 5th April, 2018 at about 2.15 a.m. she and her two children were sleeping in the house, one unknown person knocked her door. She opened the door. That person told her that her husband was in the police station and she was called

there . The victim told him to go ahead and that she would follow, but that unknown person entered her house and he tried to outrage her modesty. The victim got frightened, she jumped from the balcony of her bed-room. She fell down on a car which was parked below the balcony. Then she got up, she went to the house of her acquaintance Shri Mishra. Because of the fall, she had suffered fracture to her right leg. She had lost her two mobile phones. Thereafter, her landlady was informed. Then all of them took her to Jeevan Jyoti Hospital. After that she lodged her FIR. The FIR was initially lodged under Section 354. 338. 452, 506 of the Indian Penal Code. The Applicant was arrested on 8th April, 2018.

3. The victim's supplementary statement was recorded on 7th April, 2018. In that statement, she has stated that the unknown person after entering her house, threatened her with a knife, when she was trying to protect herself, she got hurt on her finger. At that time, the unknown person took away her mobile phone and, thereafter, she jumped from the balcony. She has stated that she was in a position to identify the person, if shown to her. She gave her further supplementary statement on 8th August, 2018. That statement shows that the Informant was called to the police

station. At that time, the Applicant was already sitting there. The Informant identified him in the police station itself.

4. The charge-sheet contains the statement of her husband. He has stated that on 5th April, 2018 he had also lost his mobile phone at a different place and he has taking search of mobile. After he returned home at 2.30 p.m. he did not find the victim in the house.

5. There are statements of Ganesh Mishra, Vatsala Sule, who had taken the victim to the hospital. The charge-sheet contains a memorandum statement given by the Applicant on 8th April, 2018. Pursuant to which his clothes and a mobile phone were recovered from his house. The victim gave one more supplementary statement on 10th April, 2018 and at that time, she has stated that she had identified the mobile phone. That mobile phone was recovered at the instance of the Applicant.

4. I have heard Shri Satyavrat Joshi for the Applicant and Smt. A.A. Takalkar, APP for the State.

5. Shri Joshi submitted that the Applicant is implicated falsely in this case because he has some criminal antecedents and police hold a grudge against him. They have failed to find the actual culprit and the Applicant is made a scapegoat. He submitted that

the recovery panchnama of the mobile phone shows that the mobile phone was sealed and surprisingly, at the time of showing the same to the Informant, there was no mention of removal of seal on the packet in which the mobile phone was kept. He submitted that the identification of the Applicant in the police station destroys the prosecution case. He also submitted that the receipt in respect of purchase of the mobile phone included in the charge-sheet shows that it was in the name of the husband of the Informant and it is his case that his mobile phone was lost at some different place.

6. Smt. A.A. Takalkar, learned APP for the State opposed this bail application. She submitted that there are serious criminal antecedents/offences registered against the Applicant. There are three cases are pending against Applicant under Sections 326, 324 of the IPC and under the provisions of NDPS Act. She has submitted that the Applicant is acquitted of the offence punishable under section 302 of the IPC.

7. I have considered all these aspects. At the outset, it must be observed that the identification of the Applicant in the police station was not a proper way to investigate the case. The other circumstance of recovery of the mobile phone shows that when it

was recovered, it was sealed and subsequently, the same phone was shown to the victim and she is supposed to have identified the same. There is no panchnama, showing removal of the seal. Identification of the mobile phone is also doubtful. The receipt of the phone stood in her husband's name and he had lost his mobile phone at some other different place.

8. Considering all these aspects as well as taking into consideration this fact that the Applicant is in custody for more than one year, I am inclined to grant bail to the Applicant. Hence, the following order:

ORDER

- (i) The Applicant be released on bail in connection with C.R. No. 293 of 2018 registered with Wakad Police Station, Pune on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (ii) Bail application is disposed of accordingly.

[SARANG V. KOTWAL, J.]