

HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1024 OF 2019

Bhaskar Ganpati Mali

... Applicant

Versus

The State of Maharashtra

... Respondent

Mr. Satyavrat Joshi, Advocate for the Applicant.

Ms. S.S. Kaushik, APP for the State/Respondent.

Mr. G.S. Zanjare, PSI, Shirala Police Station, Dist. Sangli.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 4th July, 2019.

P. C. :-

1. The applicant is seeking bail in connection with CR No. 198/18 registered with Shirala Police Station, District Sangli under Sections 376 and 506 of the IPC. The FIR is lodged by the prosecutrix on 27th November 2018. The applicant is arrested on the same day.

2. It is the case of the prosecutrix in her FIR that the applicant was her husband's friend. On 23rd November 2018, her husband had gone to Mumbai. On 24th November 2018, at around 11.30 am, the applicant telephonically called the prosecutrix and asked her to come to Shirala S.T. Stand. When she went there, the applicant took her to one lodge by name Mahi Lodge at around 1.30 p.m. It is her case that,

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inside one room of that lodge he committed rape on her by threatening her that he would kill her husband and her daughter. On the next day her husband came back. The prosecutrix was depressed. On inquiry made by her husband, she narrated the incident to him. Thereafter, both of them came to the police station and lodged the FIR. The investigation in this offence is completed and chargesheet is filed.

3. Heard, Mr. Joshi, the learned counsel for the applicant and the learned APP Ms. Kaushik for the State.

4. With the assistance of the learned counsel for the applicant, I have gone through the entire chargesheet annexed to the application. Mr. Joshi submitted that from the entire allegations it is quite clear that the relationship between applicant and prosecutrix was consensual and there was no force involved. He invited my attention to an NC lodged by the present applicant on 25th November 2018 against the prosecutrix's husband, brother-in-law and another relative. It was mentioned in that NC that the prosecutrix's husband was suspecting that the applicant was having illicit relationship with the prosecutrix and therefore they had abused and threatened the applicant. He therefore submitted that as a counter-blast, this FIR is

lodged. The chargesheet also contains the medical certificate in respect of examination of the prosecutrix and there are no injuries mentioned in it. Though this fact is not conclusive of absence of force, at this stage, it is an important fact nevertheless. The chargesheet also contains call details record in respect of conversation between the prosecutrix and the applicant. He pointed out that many calls were exchanged on 23rd and 24th November 2018 between the applicant and prosecutrix.

5. The chargesheet also contains statement of the manager of Mahi Lodge. He has stated that the applicant had come to his lodge with a lady. That lady had given her name as Jayashree Bhosale. Both of them had occupied room no. 107 between 1.30 p.m. to 3.00 p.m. on 24th November 2018. He has further mentioned in his statement that prosecutrix and the applicant were shown to him in the police station when his statement was recorded. The manager had identified the applicant as well as the prosecutrix as the persons who had occupied that room on that day and at that time. The investigation shows that the prosecutrix was a willing party and she herself did not object when her fictitious name was given. Therefore, her further story that rape was committed on her does not appear to be true. Considering all

these aspects, there is sufficient scope at this stage to hold that the relationship between the prosecutrix and the applicant was consensual. Of course, the final conclusion can be arrived only at the end of trial. However, the applicant has sufficiently made out a case for his release on bail. Hence, the following order:-

ORDER

1. The Applicant is directed to be released on bail, in connection with C.R. No.198/18 registered with Shirala Police Station, Dist. Sangli, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties each in the like amount.
2. Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)