

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

CRIMINAL BAIL APPLICATION NO. 1103 OF 2019

Kiran Baburao Todekar

...Applicant

Versus

The State of Maharashtra

...Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 1104 OF 2019

Sujit Suresh Todekar

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Aniket Nikam i/b Vivek N. Arote, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the state-respondent.

Mr. P.V. Waghmare, A.P.I. (I.O.) Karmala Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th November, 2019

PC :

1. This is an application for Bail in connection with C.R. No. 7 of 2019 registered with Karmala Police Station, Solapur for allegedly having committed an offences under Sections 376-D, 452, 323, 504, 506 r/w 34 of Indian Penal Code.
2. Both the applicants were arrested on 1st January 2019. The prosecution case is that on 31st December, 2018 at about 11.00 pm., when complainant was watching the T.V., the applicants entered into

the house of the complainant. Their face was covered by handkerchief. One of them was holding knife and threatened her by knife. One of them caught legs of the complainant/victim and the other accused had forcefully committed sexual intercourse. At the same time the husband of the complainant entered in the house. The accused holding her leg ran away. The accused committing sexual assault. He disclosed his name as Kiran Todekar and he gave the person who ran away as Sujit Todekar who was his cousin. They put him in car and were taking him to Karmala. Both accused were from her village and she knew them by face. While proceeding by car they saw Sujit Todekar and he was apprehended and both were brought to Police Station. On completing investigation, charge-sheet is filed.

3. The applicants preferred an application for bail before the Sessions Court which has been rejected.

4. Learned counsel for the applicants submits that false complaint has been lodged by the complainant. It is submitted that on account of the acquaintance of the applicant Kiran Todekar with the complainant, the husband of the complainant had called the applicant Kiran Todekar at the residence and he has been falsely implicated in this case. It is submitted that the Kiran Todekar had lodged the complaint at Karmala Police Station against the complainant, her husband and other relatives under Sections 327,

363, 341, 323, 324, 504, 506, 143, 147, 149 of Indian Penal Code and U/s 135 of Bombay Police Act. The investigation was conducted in the said case and the charge-sheet has been filed. It is submitted that the applicants were using cell phones bearing Nos. 8605154924, 9284720995, 9284765074, & 9075664246. It is further submitted that on account of the acquaintance with the complainant the applicant Kiran Todekar had given cell phone bearing No. 9130968369 to the complainant. It is submitted that there was calls between complainant and the applicant Kiran Todekar. He further submitted that on the date of incident at about 10.55 p.m. there was a call from the husband to applicant Kiran Todekar which is fortified by the C.D.R. record. This supports the contention of the applicant that the Kiran Todekar was called by the husband and was subsequently falsely implicated in this case. It is submitted that there is no other corroborative evidence to establish the case under Section 376 of IPC.

5. Learned APP submits that the complainant and her husband has given specific overt act to the applicants. The applicant Kiran Todekar was apprehended at the spot and thereafter the other accused Sujit Todekar was also apprehended. It is submitted that there is no evidence to establish the contention of the applicants that calls were made by the complainant to the applicant. However,

undisputedly, the CDR records indicates that at 10.55 pm. there was call from the husband to the applicant Kiran Todekar on the date of alleged incident.

6. I have perused the documents on record. In the complaint lodged by Kiran Todkar for the offences stated above, the investigation was conducted and charge sheet has been filed. The complainant in that case viz. Kiran Todekar had alleged that, he was acquainted with complainant in the present case(victim). He had given her cell phone with sim card in his name bearing No. 9130968369 for the purpose of chatting. He used to talk with her from cell phone No. 9284720995. They were in love. There was physical relationship on 31st December, 2018 victim had called him from mobile number stated above. She again called at 10.30 pm. She insisted that he should come to her house. They met. He received call from husband of victim. The husband of victim caught him, confined him at home. He questioned him about his affair with victim. Whole night he was detained in house. He called his relatives. On next day even Sujit was forced to sit in car and they were taken to Police Station. The prosecution case proceeds on the basis that the complainant is using phone number 9130968369 which was handed over by applicant Kiran Todakar to her. Although the complainant has stated that the persons entered into the house were from the

same village, she was not knowing their names. The First Investigation Report makes it clear that the husband of the complainant was knowing the applicant Kiran. Both the cases run counter to each other. Charge sheet has been filed in the Court and the evidence would be recorded at appropriate time. Hence this is not the stage of appreciate the evidence to give any finding with regards to the truthfulness of the version of the witness in both the cases. However apparently, C.D.R. report indicates that there was call from the husband of the complainant to applicant Kiran Todekar. In the night of 31st December, 2018 There were calls between the applicant Kiran Todkar and the cell phone which was allegedly used by the complainant. The applicant Kiran was apprehended at about 11.00 pm. On 31st December, 2018. The FIR mentions that on next day at 9.00 am. The husband of victim and others proceeded to police station. Thus whole night the accused was detained by complainant and her husband.

7. In these circumstances prima facie doubt is created with regards to the version of the complainant. Hence Bail can be granted to applicants. Order as follows :

ORDER

- i) Bail Application Nos. 1103 of 2019 and 1104 of 2019 are allowed;

- ii) The applicants are directed to be released on bail in connection with C.R. No. 7 of 2019 registered with Karmala Police Station, Solapur on furnishing PR. bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on first Saturday between 10.00 am. to 12.00 pm. till further order.
- iv) The applicant shall not approach the complainant or any other relatives of the complainant and shall not tamper with the evidence.
- v) Observations made in this order are prima facie for grant of bail and the Trial Court shall not be influenced by the same.
- vi) Bail Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)