

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

CRIMINAL BAIL APPLICATION NO. 1376 OF 2018

Bhaskar Puranchand Kothari

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.Siddhesh Samel a/w. Mr.Kiran Verma i/b. Mr.Rajeev Sawant & Associates for the applicants.

Mr.S.R.Agarkar, APP for the respondent – State.

Mr.Jitendra Kamble, PI, Goregaon Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st FEBRUARY 2019

P.C. :

1. This is an application for bail in CR No.130 of 2016 registered with Goregaon Police Station, Mumbai for offences punishable under Section 376 of the Indian Penal Code, 1860.

2. The applicant was arrested on 18th March 2016. The case of the prosecution is that the complainant (victim) had alleged that on 15th March 2016, she was informed by M/s. Royal Services that household work is available at MMRDA Colony, Goregaon and she should join the work from 16th March 2016. Hence, on 16th March

2016, the complainant had visited the office of M/s. Royal Services. At about 1.30 pm, one unknown person was present at the said office, and gave his name as Bhaskar Kothari and informed her that her services are required in his house and he would make payment of Rs.11,000/- per month. As per the instructions of the said person, the complainant accompanied him on motorcycle and reached the house at about 2.00 pm. Thereafter, she had performed certain household work in the house of the accused. At about 5.00 pm, the accused tried to come close to the victim and had forcible sexual intercourse with her. Thereafter, the victim told the accused to drop her at Jogeshwari Railway Station. At about 9.00 pm, she was dropped at the Jogeshwari Railway Station. The complaint was made by the victim on 17th March 2016. The applicant was arrested and the investigation has proceeded.

3. The statement of the witnesses Abdul Kayyum Ali who is proprietor of M/s. Royal Services was on recorded on 19th March 2016. In the said statement, it is stated that on 17th March 2016 at about 9.00 pm, the applicant had informed him that the woman who had accompanied him on previous day was dropped at Jogeshwari Railway Station at about 9.00 pm and that her services are not

required as the wife of the applicant had disapproved the same. The statement also indicates, that the witness had called the complainant and on enquiry with her, she has stated that the reason for leaving job would be stated later on. After registration of FIR, the statement of victim was recorded under section 164 of Cr. P.C. In the said statement, she has not referred the name of the applicant and has stated that one unknown person who had taken her to his residence and had committed forceable sexual intercourse with her.

4. The medical evidence also does not indicate any injuries on the person of the victim. It is also apparent that the victim was dropped at the Railway Station at about 9.00 pm on 16th March 2016 and the complaint was lodged after the intimation was given by the applicant to proprietor of M/s. Royal Services as stated in the statement of the said witness.

5. Learned counsel for the applicant submitted that the FIR is false and he has been falsely implicated in this crime as the services of the complainant were not accepted by the wife of the applicant.

6. Learned APP submitted that the complainant has attributed specific role to the applicant in her statement dated 17th March 2016.

Minor variations or contradictions would not entitle the applicant for grant of bail and such grounds can be agitated during the trial.

7. On perusal of the statements on records which are confirmed by the chargesheet, it is apparent that the complainant was knowing the name of the applicant which is evident from the statement of 17th March 2016. The alleged incident had occurred at about 5.00 pm. Thereafter, the victim herself told the applicant to drop her at the Railway Station at about 9.00 pm.

8. The applicant has intimated Mr. Abdul Kayyum Ali that the services of the complainant was not liked by his wife. Although, the said witness had made enquiry with the complainant, at that time, she has not disclosed to him about the alleged incident. Thereafter, FIR has been lodged. The medical evidence shows that there was no fresh injury on the person of the complainant. The complainant has alleged that her head was banged on the wall. The applicant is custody from 18th March 2016.

9. Considering the aforesaid circumstances, the case for grant of bail is made out.

10. Hence, I pass following order;

ORDER

- (i) Bail Application No.1376 of 2018 is allowed.
- (ii) The applicant is directed to be released on bail in connection with CR No.130 of 2016 registered with Goregaon Police Station, Mumbai, on his furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report the concerned police station once in a month on the first Saturday of every month between 11.00 am to 1.00 pm.
- (iv) The applicant shall not tamper with evidence and shall not approach the complainant till the completion of trial.
- (v) Bail Application stands disposed off.

[PRAKASH D. NAIK, J.]