

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2069 OF 2019

Ashok Yedu Gavhane] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Kuldeep Patil i/b Mr. Prashant Hagare, Advocate for the Applicant.

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

CORAM :- SARANG V. KOTWAL, J.

DATE :- 18th SEPTEMBER, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.288/2019 registered with Shirur Police Station, Pune u/sec.376, 511, 354 A, 323, 504, 506 r/w 34 of I.P.C.

2. The FIR is lodged by the prosecutrix herself. She has stated in her statement that, she had lost her husband about one and half years prior to the incident and lodging of the FIR. She was residing at Nagargaon with her mother-in-law and her children. The mother-in-law's brother i.e. the present applicant used to constantly harass her. He used to suspect her character. He used to abuse her. On

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04/04/2019, he came to the house of the prosecutrix and suggested that, they should have physical relations. At that time, the prosecutrix raised shouts and therefore he left the house. On 07/04/2019 at about mid night the applicant again come to her house. He was staying there. The mother-in-law of the prosecutrix was sleeping outside. The applicant entered the house and removed clothes of the prosecutrix. He tried to commit rape but the prosecutrix raised shouts. The mother-in-law came inside. She instead of supporting the prosecutrix, supported the applicant and told the prosecutrix to accept his behaviour. The prosecutrix escaped from there and went to her neighbour Anita and slept there. On the next day, the applicant had left her house and therefore, she returned back to her house. Thereafter, she went to her parental house and lodged her FIR on 21/04/2019.

3. The applicant was arrested on 21/04/2019 itself and since then he is in custody. The investigation is over and the charge-sheet is filed.

4. Heard Mr. Kuldeep Patil, Ld. Counsel for the Applicant and Smt.A.A. Takalkar, Ld. APP for the State/Respondent.

5. Mr. Patil invited my attention to the N.C. lodged by the prosecutrix against the applicant and another N.C. lodged by the applicant himself against the prosecutrix's relatives. The N.C. lodged by the prosecutrix was dated 07/04/2019 at about 7.50 p.m. It was in reference to the incident dated 06/04/2019 and the time of incident was 11.45 p.m. The N.C. mentions that, on 06/04/2019 at around 11.45 p.m., the applicant had assaulted her, abused her and threatened her. He was saying that, some unknown boys were visiting their house and he would not allow her to reside in that house. The N.C. lodged by the applicant was dated 07/04/2019. It was lodged at 4.52 p.m., in respect of incident dated 27/03/2019 in that incident the prosecutrix's relatives had assaulted and threatened the applicant because he was constantly harassing the prosecutrix.

6. Mr. Patil submitted that, looking at the past dispute, there is a strong possibility that, the applicant is implicated falsely. He submitted that, the neighbour Anita has not fully supported the

prosecutrix's story as she had not mentioned the time when the prosecutrix went to her house in the night.

7. Ld. APP opposed these submissions and submitted that, the applicant was constantly harassing the prosecutrix. The incident is corroborated by the statement of witness Anita who had stated that, the prosecutrix had gone to her house to sleep in the night. There was no reason as to why the prosecutrix should have left her own house in the mid night and resided with her neighbour in the night.

8. I have considered these submissions. The N.Cs lodged against each other show that, there was serious dispute between the prosecutrix and the applicant. The non cognizable case lodged by the prosecutrix makes no reference to the incident dated 04/04/2019 at which time the applicant had allegedly proposed to her to keep physical relations. There was no reason as to why the prosecutrix could not have mentioned this important facts in her non cognizable case. The prosecutrix was well aware of her rights to approach the police in case of any untoward incident. In such situation, it is difficult to believe that, she had not immediately approached the police station

again on the next day of the main incident which had taken place in the mid night between 06/04/2019 and 07/04/2019. The FIR is lodged much belatedly on 21/04/2019. It shows that, it is lodged as an after thought. As rightly pointed out by the Ld. Counsel for the applicant that, the incident could not have taken place in the manner in which it is alleged in the FIR, because there is no reference to her children though she had clearly stated in her FIR that, she was residing with her children in the same house. Even the statement of the witness Anita reveals that, when the prosecutrix had come to her house for staying over night, the prosecutrix did not tell her anything about the incident. The incident was told to this witness much belatedly.

9. In any case, the allegations do not travel beyond an attempt to commit rape as well as beyond the allegations u/sec. 354 A of I.P.C. The merits of the matter would be finally decided during trial. However, considering the above discussion, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.288/2019 registered with Shirur Police Station, Pune, on his furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)