

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

Cri. BAIL APPLICATION NO. 2362 OF 2018

Vyankatrao Tumbayya Chinnala

... Applicant.

Vs.

The State of Maharashtra

... Respondent.

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Mr. Nitin Sejpal, Advocate i/by Pooja Sejpal, for the Applicant.

Mrs. A. A. Takalkar, APP for the State.

Mr. Sabre Alam, Advocate i/by Umar Kazi for Intervenor.

(Mr. S.S.Barade, API, Kolsheewadi Police Station, is present).

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CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 28, 2019.

P.C :-

1 The Applicant is seeking bail in C.R. No. I- 403 of 2018 registered with Kolsewadi Police Station, for the offence punishable under Sections 376(D), 365, 506 of IPC.

2 The first information report was lodged on 11.09.2017. The Applicant was arrested on 12.09.2017.

3 The case of the prosecution is that on 09.09.2017, the victim was called by one Ashu @ Dnyaneshwar Sonawane, who was acquainted with her and he asked her to come at Katemanewali Naka alongwith her Adhar-Card. She expressed

her inability to visit the said place. She was threatened and therefore, she left her house and went to Katemanewali at about 5.30 p.m. by Auto-Rikshaw. She met Shri Ashu Sonawane at the said spot. He forcibly took her to Shagun Lodge against her wish. At the said lodge, they showed Adhar Card of both of them and hired a room therein. Thereafter, they entered into the room. She was given water from the bottle. After drinking the same, she felt uneasy. The said person had forcible sexual intercourse with her. The victim was also asked to switch of her phone. Subsequently, the aforesaid person took the victim to hotel Vaishali at Kalyan (w). The victim was forced to consume beer. The accused made phone call to his brother and called him at Vaishali hotel at Kalyan. Despite her protest, the accused refused to drop the prosecutrix at her home and took her to Manali Palace at Titawala. The victim was taken to a room in the said hotel and she was subjected to sexual assault against her wish. She was again taken to another room and subjected to same ordeal. Ashu then made a call to his brother Tushar and forced the victim to talk to him. It is further alleged that the co-accused Tushar was waiting with four wheeler vehicle outside Manali Lodge. The victim requested them to drop her at home. Co-accused Tushar forcibly took her to hotel Monarch at Dombiwali and at that place, Tushar had forcible sexual intercourse with the victim.

4 On the next day, at about 10 a.m. Ashu Sonawane left the room. Thereafter, the victim and Tushar booked another room. She was forced to consume beer and she was subjected to sexual assault. Thereafter, Ashu Sonawane took selfee of her and she was threatened of dire consequences and was dropped near Vitthalwadi Police Station.

5 On 11.09.2017, the victim told her husband and mother-in-law about forceful sexual intercourse by the accused. Thereafter, FIR was lodged with Kolsheewadi police station.

6 Pursuant to the registration of the FIR, statements of several witnesses were recorded. The victim was medically examined and on completing investigation, chargesheet was filed.

7 The applicant preferred an application for bail before the Sessions Court, which was rejected vide order dated 22.06.2018.

8 Learned counsel for the Applicant made several submissions in support of the application. It is submitted that the complaint is totally false and frivolous. The applicant is falsely implicated in this case. It is difficult to believe the version of the complainant in the first information report.

Learned counsel for the applicant pointed out statement of the complainant dated 11.09.2017. In the said statement she has stated that on 09.09.2017 on account of quarrel with her mother-in-law, she left her house. She met co-accused Ashu Sonawane and both of them went to hotel Monarch at Dombiwali. It is also stated that the said accused advised her to return home and therefore, she returned home. Her statement is recorded by Kolsewadi police station. Learned counsel for the applicant also points out several other documents with regard to the entry of the victim and accused in the lodges / hotels after verification of their identification and submitted that the version of the complainant is false and the relationship was consensual. Learned Advocate for the applicant also points out that the medical case papers, indicate that there is no visible external - injuries on the person of the victim. Learned counsel also points out that the registers of the hotels, forming the part of the charge-sheet, reflect the name of the victim. It indicates that the victim entered in the hotels / lodges and has disclosed her identity. Learned counsel also points out that the record/report regarding the CCTV footage, which also show that the demeanour and the presence of the victim in the hotel/lodge, falsify the version of the victim.

9 Learned counsel for the applicant also drew my attention to the statements of witnesses viz. Vinod M.

Deshekar, Naresh D. Kubare, Jagdish K. Dhavat, Sanjay J. Aartiya, Sayyad F. Mohd. Musa, Shekhar N. Shetty and Balkrushna R. Shetty, which, according to him, show that the presence of the victim at the hotel / lodge was voluntarily and she was not forced, as alleged by her. Learned counsel also points out that the call data record indicates that there were several phone calls between the victim and both the accused.

10 Learned APP submitted that the victim was threatened and therefore, she did not disclose the incident. The statement dated 11.09.2017 recorded by the Kolsewadi police station was on account of the intimidation by the accused. The version of the complainant will have to be accepted and the grounds raised by the applicant are to be adjudicated at the time of the trial.

11 I have perused the documents on record. As stated herein above, first statement of the victim dated 11.09.2017 did not implicate applicant. She has stated that she had left the house on her own and she got in touch with the co-accused Ashu Sonawane. There are no allegations of sexual assault. Several other documents pointed out by the learned counsel for the Applicant such as call data records, CCTV footage and entries in the register of lodge and statement of witnesses run counter to the version of the complainant reflected in the first information report.

12 Investigation is completed and charge-sheet is filed. The applicant is in custody from the date of the arrest. In the light of factual matrix of the case, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- i. Application No. 2362 of 2018 is allowed and disposed off.
- ii. The applicant is directed to be released on bail in connection with CR No. I-403 of 2017, registered with Kolsewadi Police Station, on furnishing PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- iii. Applicant shall report concerned police station once in a month on first Saturday of the month between 11 a.m. to 1 p.m. and thereafter, as and when called for.
- iv. The applicant shall not try to tamper with the evidence and shall not approach the prosecutrix.
- v. The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks.

(PRAKASH D. NAIK, J.)

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