

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

CRIMINAL BAIL APPLICATION NO. 2800 OF 2018

Vijay Soman Kewat

... Applicant

Vs.

The State of Maharashtra

... Respondent

...

Mr. Rajeshkumar Salpuram for the applicant.

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

Mr. A.G. Koltharkar, Police Inspector, Sion Police Station is present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 12th FEBRUARY, 2019.

P.C.

1. This is an application for bail in connection with CR No. 86 of 2018 registered with Sion Police Station for the offence punishable under Section 376, 354(D) of Indian Penal Code.

2. Initially, the First Information Report was lodged on 2nd April, 2018 for the offence punishable under Sections 376, 354(D) of Indian Penal Code read with Section 34 of Indian Penal Code.

Victim has alleged that on 1st April, 2018 at about 11 p.m. while she was returning home two unknown persons chased her and hence she started running. The said persons then followed her.

She was forcibly taken to the place of incident and both of them had forcibly sexually assaulted her. Complainant attributed the alleged act of sexual assault to two persons whose description was given in the complaint. It is also alleged that one of the person was apprehended near the place of incident and he was shown to the complainant by the police. She has identified that the said person. During the course of investigation statement of two witnesses were recorded on 2nd April, 2018 who has stated that they had seen the accused committing the alleged act and running from the place of incident. They identified accused after he was apprehended by the police near the place of incident. Applicant was produced before the Court and from time to time he was remanded to judicial custody. On completing investigation, chargesheet has been filed.

3. On perusal of the chargesheet it is apparent that supplementary statement of the complainant was recorded on 3rd April, 2018 in which she has stated that only one person was involved in the crime and she was sexually assaulted by a single person and her version appearing in the first information report was made by her as she was in a disturbed state of mind and partially unconscious. Statement of the two witnesses indeed

refers to the fact that accused was running from the place of incident and that they had seen him who committed the alleged act as he was allegedly apprehended by the police and was identified by them. In these circumstances there was no identification parade. However, it is pertinent to note that in the medical history recorded at the instance of the applicant, it is stated that there was sexual assault on 1st April, 2018 she was under intoxication with some cold drink (Pepsi) by unknown person. Admittedly in the first information report it is mentioned that two persons chased her and committed forcible sexual intercourse and subsequently changed her version by stating that one person was involved. Learned counsel for the applicant submitted that the possibility of the act being consensual cannot be ruled out.

4. Taking into consideration aforesaid circumstances, infirmity in the evidence and the variation in the statement of the complainant, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection

with C.R. No. 86 of 2018 registered with Sion Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

iii. Applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks;

iv. Applicant shall report to the concerned Police Station once in a month on first Saturday of every month between 11 a.m. to 1 p.m. till further order;

v. Applicant shall not tamper with the prosecution witnesses or shall not approach the complainant;

vi. Applicant shall furnish details of his residential address to the Investigating Officer and in the event of change of address, the same shall be intimated to the Investigating Officer;

vii. Applicant shall attend the trial Court regularly unless exempted by the trial Court;

viii. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)