

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

CRIMINAL BAIL APPLICATION NO.2829 OF 2018

Rakesh Nilkanth Nandi

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.Mihir Gheewala i/b. Mr.Santosh Pawar for the applicant.
Mrs.A.A. Takalkar, APP for the respondent – State.
Mr.A.A.Sawant, PI, Juhu Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st FEBRUARY 2019

P.C. :

1. The applicant is seeking bail in CR No.301 of 2018 registered with Juhu Police Station, Mumbai for offences punishable under Sections 376, 354, 354A, 506 of the Indian Penal Code, 1860. The applicant was arrested on 3rd July, 2018.

2. The prosecution case is that the victim was the tourist who had visited India on 18th November 2017 and came to Mumbai somewhere on 11th April 2018. On 14th June 2018, she had gone to Gateway of India and from there she intended to take a tour for further site seeing in tour bus. The applicant had conversation with

victim. When the bus reached to its final stop at Juhu at about 7.00 pm, the applicant had offered to show the first informant the house of prominent actor which was situated nearby area. The first informant agreed and both of them started walking toward the house of the celebrity. Subsequently, the applicant/accused told the complainant that he would drop her at hotel in Colaba. She agreed for the same. The accused booked Ola cab on his cell phone and both of them sat in the Taxi at about 8.30 pm. It is alleged that the applicant had stopped Taxi in between and went to purchase beer. After he returned to Taxi, he tried to force the complainant to consume beer. He put his hand on shoulder of the complainant and outraged her modesty by touching her inappropriately. He also subjected her to sexual assault as alleged in the FIR. The FIR was lodged on 29th June 2018. After completing the investigation, chargesheet is filed.

3. The case of the complainant is that she was sexually abused by the applicant/accused while travelling in Ola Cab. The distance travelled by both the parties was approximately about two hours. It is alleged that during the said period, the applicant had outraged complainant's modesty and sexually abused her. Learned counsel for

the applicant submitted that assuming the alleged acts attributed to the applicant are true from the circumstances narrated in complaint, it appears that acts were consensual in nature. During the period of travel with the accused, there is nothing to indicate that the complainant had protested. Both of them had travelled for a long distance. The statement of Taxi driver is recorded in which he has stated that he has heard the complainant stating that the applicant/accused should not touch her but he presumed that both of them are lovers and did not intervene. Beyond that the Taxi driver did not find anything objectionable.

4. Learned APP submitted that the complainant has attributed role of sexual assault to the applicant/accused. However, as stated above the circumstances reflected in FIR and from the statement of Taxi driver about the alleged acts appear to be consensual. The applicant is in custody from date of his arrest. Investigation is complete and chargesheet is filed.

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

6. Hence, I pass following order;

ORDER

- (i) Bail Application No.2829 of 2018 is allowed;
- (ii) The applicant is directed to be released on bail in connection with CR No.301 of 2018 registered with Juhu Police Station, Mumbai which is the subject matter of Sessions Case No.334 of 2018, 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 to the concerned police station once in a month on the first Saturday of every month between 11.00 am to 1.00 pm till further orders;
- (iv) Criminal Bail Application stands disposed off.

[PRAKASH D. NAIK, J.]