

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2665 OF 2019

Jitin Mothukuri, Age 23 years, Occ.Student,
R/o.Kalyani Nagar, Pune.

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.M.S.Mohite with R.R.Ganu with Upendra Khare i/by Sachin K.
Hande for applicant.

Mr.Harshad Nimbalkar i/by Satyam H.Nimbalkar for respondent
no.2.

Mr.H.J.Dedhia, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th December 2019

PC :

1. The applicant is apprehending arrest in connection with CR No.472 of 2019 registered with Paud Police Station, Pune for offences under Sections 354, 354-A, 354-B, 376, 511 of Indian Penal Code.

2. The case of prosecution is that on 27th October 2019 the victim along with her friends celebrated Diwali party at a bungalow of their friend at Ambi Valley, Lonavala, Pune. Applicant had also joined party with his friends. After enjoying party and dinner at about 1200 hours, the complainant proceeded to room on the second floor of bungalow for taking rest. Rest of the friends were busy in party. At about 4.30 am to 5 am, she realized that the applicant was sleeping on her body and kissing her. Her clothes were removed forcefully and he was trying to commit sexual intercourse. The victim pushed him

aside and went out of room. She searched her friends but could not find them. She proceeded to the room after noticing that the applicant is not there and went to sleep. After some time the applicant again entered into the room. Except wearing T-shirt, he was not wearing any other cloths. The applicant touched victims chest, started kissing her and tried to force himself upon her. She shouted for help. The applicant left the room. She was under mental trauma. On 29th October 2019 she told about the incident to her friends. She went home. She was under disturbed state of mind. She told about the incident to her family. She was required to consult psychiatrist. On 8th November 2019 the FIR was lodged with Paud Police Station.

3. The applicant had moved an application for anticipatory bail before Sessions Court, at Pune. The said application was rejected by order dated 20th November 2019.

4. Learned counsel for applicant submitted that taking the FIR and the text messages exchanged between the parties as it is, the offence u/s 376 of IPC is not made out. There was no penetrative sexual assault. At the most the FIR shows offence punishable under Section 354-A IPC. There is delay in FIR. It is submitted that the applicant and the victim were friends. They had visited the place for Diwali celebration. Both were under influence of liquor. The tenor of text messages and contents of FIR indicate that neither the complainant nor the applicant were in a position to understand as to what was happening. The victim was not sure whether there was sexual intercourse. There is no material on record to show that there was any sexual intercourse. There was no intention to commit

sexual intercourse. The text messages indicates that the applicant had shown remorse to what had happened and was under belief that it is consensual act. Learned counsel pointed out the report filed by police and submitted that custodial interrogation of applicant is not necessary. He is willing to co-operate with investigation. He would make himself available for interrogation. He is willing to hand over cell phone. This is a peculiar case in which he need not be subjected to police custody.

5. Learned APP submitted that offence is of serious nature. The contents of FIR and the text messages exchanged between the complainant and applicant confirms the occurrence of incident. The complainant was not consenting party. The FIR clearly indicates that she had objected for the acts committed by the applicant. In spite of that the applicant repeated the act. It is submitted that at this stage there is sufficient evidence to show involvement of applicant.

6. Learned advocate for the complainant submits that this case is covered by Section 375 of IPC. The complainant has categorically stated that she had objected to the first move of the applicant when he was lying on her person and in spite of that he again followed her and indulged in similar act. The facts would show that the applicant was involved in the commission of crime.

7. I have perused the FIR. Also perused the investigation papers tendered by learned APP. Perused the medical case papers with regards to examination of complainant. From the tenor of FIR it is apparent that the victim had realized that in the early hours on the date of incident the applicant was lying on her. Her clothes were

removed. He was trying to have sexual intercourse. She pushed him and went out of room. She tried to search her friends. She came back to the room. She noticed that the accused was not there and again went to sleep. The applicant again entered into the room and repeated similar act. At this stage it is not advisable to give a finding whether offence u/s 376 is made out. The investigation is in progress. Admittedly the FIR attributes specific overt act to the applicant. Considering the material on record, no case for grant of anticipatory bail is made out. The application is rejected.

(PRAKASH D. NAIK, J.)

MST