

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

**CRIMINAL BAIL APPLICATION NO. 3083 OF 2018**

|                           |                |
|---------------------------|----------------|
| Dhanpati Shyamlal Jaiswar | ... Applicant  |
| Vs.                       |                |
| The State of Maharashtra  | ... Respondent |

...

Mr. R.V. Gupta for the applicant.  
Ms. A.A. Takalkar, APP for the Respondent-State.  
Mr. Minnath D. Kharnikar, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.  
DATE : 14<sup>th</sup> JANUARY, 2019.**

**P.C.**

1. This is an application for bail under Section 439 of Code of Criminal Procedure in connection with CR No. 406 of 2017 registered with Malad Police Station for the offence punishable under Section 376, 504, 506, 323 read with 34 of Indian Penal Code. Applicant was arrested on 22<sup>nd</sup> July, 2018.

2. The case of the prosecution is that the complainant is the daughter of the applicant. She is presently residing with her elder brother and sister in law. Previously, she was residing with the applicant, her father, elder brother Sanjay, elder sister Nirmala and younger brother Sandip at Ramdev Dhandeshwar Chawl,

R.N.09, Ovlem Tank Road, Malad (West). It is alleged that younger brother and father had physically assaulted her since she was aged about 10 to 12 years. The complainant told the said fact to her mother (applicant) but she did not take any action and supported the acts of complainant's father and brother. Elder brother got married in the year 2005 and since 2007, her wife Laxmi started residing with them. Complainant then informed about the sexual assault committed by two accused to them but they were helpless. In 2008 entire family shifted to Mahakali Nagar, Malvani, Malad (West), Mumbai as the other premises were sold. Younger brother continued to sexually assault the complainant. He also threatened that he would make video clip viral. He had physically tortured the complainant. The applicant and father of the complainant used to say that they do not want girl. In 2012, the complainant was sexually assaulted by her father. Applicant had given contraceptive pills to avoid pregnancy. Younger brother Sandeep used to exploit the complainant till 2014. Subsequently, he got married in August, 2014, he again sexually assaulted the complainant. Hence, First Information Report was lodged on 28<sup>th</sup> September, 2017.

3. Applicant (mother), younger son (brother) and father were

arrested and they are in custody. On completing investigation, chargesheet has been filed.

4. Learned counsel for the applicant submitted that the complaint is absolutely false and frivolous. There is property dispute between the applicant, her husband younger brother on one side and the complainant, elder son of applicant, Sanjay, his wife Laxmi and one Dr. Umesh Tari on other side. On account of property dispute false FIR was lodged. He submitted that the last incident as alleged in the First Information Report had occurred in August, 2016 whereas FIR was lodged in September, 2017. The version of the complainant is false concocted as in the earlier complaints said version was not reflected. Learned counsel for the applicant pointed out the statement of brother of the complainant Sanjay, his wife Laxmi and submitted that their version is false and frivolous which is apparent from the fact that in the earlier complaints and the statement there was no reference of the complainant being sexually assaulted by the accused.. He also pointed out that the bank statement of the complainant which indicates that there is withdrawal of Rs.5,50,000/- by the complainant from the said account. Applicant was the joint holder of the said account. It is further submitted that NC complaint was

lodged by Laxmi (sister in law of complainant), on 29<sup>th</sup> July, 2015, in which there is no reference of sexual assault upon her or the complainant. N.C. complaint however refers to the property dispute. It is submitted that on perusal of the documents which are annexed to this application in the form of earlier complaint, FIR, statement recorded during the course of investigation would make it clear that the version of the complainant in the present FIR is false and concocted. It is further submitted that overt acts of sexual assault are attributed to the other accused.

5. Learned APP submitted that the First Information Report attributed specific overt act to the applicant. Version of the complainant is supported by witnesses Sanjay and his wife Laxmi. It is submitted that the contents of the First Information Report clearly makes out the offence under Section 376 of Indian Penal Code and the defence of the applicant cannot be considered at this stage. It is therefore submitted that the application be rejected.

6. I have perused the chargesheet filed in this case as well as several other documents which are part of this application. As stated above, the complaint is lodged by the applicant's daughter. The complaint refers to the fact that she was sexually assaulted since several years by the co-accused. From the complaint, it

appears that the complainant is aged about 25 years, having completed course of mass media. According to the complainant, she was residing with the applicant and other family members since her child hood. At the time of lodging the complaint, she was residing with her elder brother Sanjay. Last incident referred in the FIR had occurred in February, 2016 and the First Information Report was lodged on 28<sup>th</sup> September, 2017. Statement of complainant's brother Sanjay (son of applicant) was recorded on 25<sup>th</sup> October, 2017 wherein he has referred to sexual assault upon the complainant as well as his wife by the co-accused. He has also alleged that another sister was also sexually abused. The said sister is no more. He has referred to the incidents of 2006 and thereafter. Statement of Laxmi was recorded on 16<sup>th</sup> July, 2018 in which she has also referred to the incident of 2006 and thereafter. Applicant's contention is that there was a conspiracy between the complainant, applicant's son (Sanjay) and one Dr. Umesh Tari to lodge the false complaint in order to grab the property. Perusal of the bank statement indicates that the complainant had withdrawn an amount of Rs.5,50,000/- in the year 2015. Apparently, it is a joint account with the applicant. It is pertinent to note that the applicant and her husband had lodged

the complaint on 20<sup>th</sup> January, 2016 contending that on account of property dispute there is every likelihood of the applicant and others being falsely implicated in the rape case. N.C. complaint was lodged by daughter in law of applicant (Laxmi) on 29<sup>th</sup> July, 2015. In the said complaint, she has stated that there is property dispute against the opponents and on account of the said dispute there was a quarrel with regards to ownership of the property. The said complaint was filed against applicant and others. In the said complaint dated 29<sup>th</sup> July, 2015, there is no reference of sexual assaults committed by the accused either against the complainant or against her. However, on the next day, Laxmi had filed the First Information Report vide CR No. 463 of 2015 and the offence was registered under Section 354, 506 of Indian Penal Code against the younger son of the applicant (Sandeep). In the said FIR she has alleged that the accused had outraged modesty nine years ago and two years ago. Pertinently, there is no reference to sexual assault upon the complainant or the said witnesses. Investigation was completed and chargesheet was filed against Sandeep in the said case. On perusal of the said chargesheet, it appears that statement of complainant was recorded on 30<sup>th</sup> July, 2015 where there is no reference of any

acts of sexual assault. Statement of the complainant in present FIR was recorded on 1<sup>st</sup> August, 2015. However, there is no reference to any sexual assault against her at the instance of the accused in the present case or against Laxmi. It is pertinent to note that FIR refers to the incident which had occurred prior to the 1<sup>st</sup> August, 2015. Laxmi had lodged another FIR on 19<sup>th</sup> June, 2017 against Sandeep for the offences punishable under Section 376 of Indian Penal Code. In the said FIR she refers to the incidents of 2005 onwards. It is alleged that she was sexually assaulted by Sandeep. It is pertinent to note that allegations made in the said FIR were completely absent in the FIR lodged by Laxmi on 30<sup>th</sup> July, 2015. Learned counsel for the applicant submits that although the said FIR was lodged on 19<sup>th</sup> June, 2017, co-accused Sandeep was not arrested nor chargesheet has been filed against him. Learned counsel has also relied upon the photographs of the family which indicates that relationship were cordial at one point of time and there is no truth in the allegations made in the First Information Report. Learned counsel for the applicant also points out the receipts with regards to the payment made by Sanjay towards the education of Sandeep which also indicates that relationship were cordial at the relevant time. It is also submitted

that applicant and her husband had lodged the complaint against Dr.Umesh Tari who is supporting the complainant and Sanjay. During enquiry, statement was recorded in which it was stated that there was a property dispute. Considering the aforesaid scenario, it is apparent that in the earlier complaints, statements there was no reference of sexual assault against the complainant by any of the accused. Although, the allegations in the First Information Report appears to be serious in nature. In the light of the aforesaid circumstances based on documents relating to complaints, statement recorded by police, *prima-facie*, the version in the complaint speaks volumes of doubt. The applicant is in cuystody from the date of arrest. Investigation is completed. Chargesheet is filed. In the circumstances, 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. 406 of 2017 registered with Malad 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 attend the trial Court during the hearing of the case regularly, unless exempted by the Court for some reason;
- v. Applicant shall not tamper with the prosecution witnesses;
- vi. Criminal Bail Application stands disposed off.

( PRAKASH D. NAIK, J. )