

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.992 OF 2020**

Avinash Sunil Mapare .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Satyavrat Joshi i/b Mr. Rohit Shevate for the Applicant.

Mr. S.V. Gavand, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 22ND DECEMBER, 2020.

P.C:-

1. On 09/03/2020, C.R. No. 808 of 2019 registered with Loni Kalbhor Police Station, Pune resulted into filing of R.C.C. No.1003 of 2020 on submission of the charge-sheet before the J.M.F.C., Court No.7, Pune. The charge-sheet has been filed under Sections 376(D), 511, 354, 324, 363, 143, 147, 148, 149, 323, 504, 427 of the IPC and Section 4 and 25 of the Arms Act.

2. Five named persons are charge-sheeted whereas as far as the present Applicant, who is arraigned as Accused No.6 is concerned,

AJN

the charge-sheet is filed by taking recourse to Section 299 of the Cr.P.C. This accused is before the court seeking bail in anticipation of his arrest.

3. With the assistance of Mr. Joshi, learned counsel for the Applicant and Mr. Gavand, learned A.P.P., perused the charge-sheet and the material compiled therein.

4. The FIR came to be registered on a complaint filed by a young girl aged 20 years, who has stated that on 22/11/2019 when she, along with her friends, was seated in a Fortuner Car near Alandi Railway Station, 7-8 persons, aged between 20 to 25 years, came there on three motorcycles, wearing shirts, T-shirts and jeans pants. They were armed with iron rods, swords and sickles. They started verbally abusing them and enquired about one person. When informed that the person had already left, they hit their car. It is also alleged that the two male friends accompanying her were also assaulted. It is then alleged that she was accosted by the said persons and force to ride on their motorcycle and she was taken in a room adjoining the railway station. She could note the number of the motorcycle and she alleged that her modesty was outraged in the said room. After realizing that the police had reached there, they fled away is her version.

5. The supplementary statement of the informant was recorded

on the same day of lodging of FIR i.e. on 23/11/2019 where she has referred to 7 to 8 persons who arrived on motorcycles. She reiterates the description of the said persons but added something more. She states that at the time when her friends were being assaulted, the assailants had also threatened her and when she pleaded that she should be freed, they expressed a desire to have sex with her. Since she was petrified, she expressed her willingness. It is then alleged that two boys took her to a room near the railway station and the third boy, who was waiting outside the room, also came there. It is then alleged that they attempted to molest her and one of the boys even kissed her. The two boys who were present in the room ravished her by touching her inappropriately without removing her clothes. At that very moment, when the boy standing outside the room, raised an alarm that the police is arriving and all of them fled away. This version resulted into institution of charge-sheet under Section 511. There is no material compiled in the charge-sheet establishing the identity of the accused persons alleged to have caused the episode. Learned A.P.P. fairly states that no Test Identification Parade has been conducted qua any of the accused. This probably is the reason why the orders in respect of the co-accused Ganesh, Yogesh, Ajay and Ganesh Chaudhari resulted into their release on bail.

6. Perusal of the said order reflects that *prima facie* the ingredients of the offence of rape is not clearly made out nor the

name of the Applicant is specifically taken in the FIR. Now even the charge-sheet has been filed and no Test Identification Parade is conducted. In the absence of any material compiled in the charge-sheet to show that the Applicant was participant in the alleged incident, which is complained of, resulting into filing of the charge-sheet and particularly when the investigation is now complete and charge-sheet is filed, the custodial interrogation, in my considered opinion, is not warranted. Needless to state that the observations made above are *prima facie* in nature and limited only for deciding the bail application of the present Applicant. Hence the following order:

ORDER

- (a) In the event of arrest, the Applicant – Avinash Sunil Mapare shall be released on bail in C.R. No.808 of 2019 registered with Loni Kalbhor Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall co-operate with the investigation and attend to the Police Station as and when required

by the Investigating Officer.

- (d) The Applicant shall mark his attendance before the Trial Court where the trial is pending once in two months and attend to the trial regularly when it proceeds unless exempted by the Trial Court.

7. The Application is allowed in the aforestated terms.

8. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.