

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

BAIL APPLICATION NO.2477 OF 2019

Bhaskar M. Warghade

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Harshad Sathe i/b. Mr.Saurabh Butala, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for Respondent – State.

Mr.Arjun Mithu Kale, PSI Mokhada Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 14, 2020.

P.C.:

This is an application for bail in connection with C.R.No.I-15 of 2019, registered with Mokhada Police Station, District-Palghar, for the offence punishable under Section 376(A) (2), 506(2) of Indian Penal Code ("IPC", for short).

2 The prosecution case is that the applicant was working as head constable attached to Mokhada police station.

The victim is a married lady. She had filed maintenance proceedings in the Court. The brother of victim got acquainted

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with the applicant. On 10th March, 2019, the applicant told victim's brother that the case relating to maintenance filed by the victim is pending in the Court. He contacted him on 12th March, 2019, to discuss about the said case. On 12th March, 2019, the victim's brother called the applicant at about 6:00 p.m. The applicant told him that some documents relating to the case of the victim are to be prepared. The applicant told him to come with the victim. Thereafter the victim, her son and her brother left towards Mokhada on motorcycle. The applicant met them at village Aadoshi. The victim was made to sit on the motorcycle. Her brother was told to go home. He was asked to come to his room next day at about 8:00 a.m. The victim and her son aged about 3 years and applicant left towards Mokhada on his motorcycle. Her brother returned home. The victim and the applicant reached home at 10:00 p.m. In the same night, the accused had sexually assaulted the victim by threatening that he would kill her son. The victim was with accused till 6:00 a.m. She left the house of the accused and went to her house and intimated the incident to her brother. Thereafter, complaint was lodged. The FIR was lodged on 14th March, 2019 at 01:55 a.m.

applicant has been falsely implicated in this case. The version of victim cannot be believed. It is difficult to accept that the victim would alone accompany the accused with her minor son and would stay with the applicant. The facts would indicate that it is consensual act. The medical evidence does not support the case of the prosecution. Examination of victim do not show any external injury on her person. The applicant was working as a head constable and there are no chance of absconding.

4 Learned APP submits that the victim had attributed specific overt-act to the applicant in the statement under Section 161 and 164 of Cr.P.C. Applicant had threatened the victim that he would kill her minor son and subjected her to sexual assault. The victim is a married lady, and, hence, there may not be any injuries on her person. The statement of witness mentions that the applicant was on duty and without intimation he left the police station on 12th March, 2019. The statements of witnesses also mention that the accused was residing alone at the premises.

4 The applicant is in custody from 14th March, 2019. Investigation is completed and charge-sheet is filed. According to victim, she left with the applicant on 12th March, 2019, on his motorcycle and stayed with the accused in the night. She was

subjected to sexual assault by the accused. On the next date at about 6:00 a.m., she left the premises of the applicant. FIR was lodged on 14th March, 2019 at about 01:55 a.m. Statement of Kailas Balu Warghade recorded under Section 164 of Cr.P.C. would indicate that on 12th March, 2019, the applicant joined the duty. He took the charge at 8:30 p.m. He immediately left for dinner and returned for duty at 09:45 p.m. He again left duty at 10:15 p.m. to 10:30 p.m. Thereafter, he did not return. He reported for duty at 08:00 a.m. on the next date. The statement of the victim mentions that she had reached the premises where the alleged incident had occurred with the applicant at 10:00 p.m. Medical report relating the examination of the victim mentions that there were no injuries on her person. The victim stayed with accused when his family members were not there.

5 Considering the aforesaid circumstances, further detention of the applicant is not necessary. There are no criminal antecedents against applicant. Applicant is presently under suspension from his employment. On certain terms and conditions, bail may be granted to the applicant.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2477 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.I-15 of 2019, registered with Mokhada Police Station, District-Palghar, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall stay out of the jurisdiction of district Palghar, and, he shall enter the district Palghar only for attending the hearing before the trial Court;
- (iv) Applicant shall not contact the victim or her relatives and shall not tamper with the evidence, in any manner;
- (v) Bail Application No.2477 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)