IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3144 OF 2019

Ghanshyam Jagaru Sharma .. Applicant

Vs.

State of Maharashtra .. Respondent

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Mr.Amit A. Mane, Advocate for the Applicant.

Ms.Veera Shinde, APP for Respondent – State.

PSI S.V. Sarade, Mumbra Police Station, Thane City, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 21, 2020.

P.C.:

This is an application for bail in connection with C.R.No.I–616 of 2018, registered with Mumbra Police Station, District–Thane, for the offence punishable under Section 376(D) read with 34 of Indian Penal Code ("IPC", for short). Applicant was arrested on 15th November, 2018.

2 The case of the prosecution is that the complainant is a married lady aged about 25 years. She had a dispute with her husband. She rented premises at Mumbra. She got acquainted with her neighbour Heena Shaikh. On 12th November, 2018,

RajeP. Aher
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Heena Shaikh gave call to her and told her that her friend Chaitali has work and she should talk to her. Hence, the complainant gave a call to Chaitali. Complainant was told that she would earn money after having physical relationship with one person. The complainant refused to do so. She gave this information to Heena Shaikh. Heena Shaikh told her that she had a talk with Chaitali and she is not required to do any such work she is required for modelling. Heena Shaikh also told her that she would join her and they would meet at Diva station. On 13th November, 2018, complainant left Mumbra and went to Diva station alongwith Heena. After reaching there, call was given to Chaitali. They were informed by Chaitali that her brother–in–law would meet them. After some time Aniket met them. He took both of them with him. Thereafter he sent Heena Shaikh to Diva station and told the complainant that she should come alone with him for modelling. Initially Aniket took the complainant to one building. She was informed that her photographs will be clicked for modelling. Thereafter the complainant was dropped to Diva railway station. She was told to go to Dombivli and return after two hours for modelling test. The complainant met Chaitali and Heena Shaikh. All of them went to Dombivli. Thereafter again they came to Diva railway station. Aniket called the complainant

for modelling test. She was called alone. The complainant went to Mumbradevi Colony in room situated in chawl. She could not find any articles relating to modelling tests. One more person was there in the premises. She gave call to Heena and Chaitali and told them that Aniket and the other person are fraud and there are no equipments relating to modelling in the room. The complainant was persuaded that nothing wrong would happen to her as Aniket is brother–in–law of Chaitali. Complainant, Aniket and the person were in the room. Aniket referred to the other person as Patekar sir. Both of them caught hold of the complainant. She protested. She was informed that money has been paid for maintaining sexual relationship with her. Complainant told them that she has not received any money. The person present in the premises caught hold of the complainant. Both of them had forcible sexual intercourse with her. Complaint was lodged with police station and First Information Report ("FIR", for short) was registered on 14th November, 2018.

3 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. He has not played any role in the crime. The complaint is false. It appears that on account of payment of money, the FIR was lodged by the victim. The name of the applicant was disclosed even prior to test

identification parade. Co-accused Aniket had referred to another person as Patekar Sir. However, for no reason the applicant was arrested and put up in the parade. There is delay in lodging FIR. Medical case paper do not support the prosecution case. There were no injuries on the person of the victim. There are discrepancies regarding the place of offence. The room in the chawl where the alleged incident has occurred was not rented out to the applicant. No specific description of the room is appearing in the spot panchanama. Inspite of knowing that the victim was offered money for sexual relationship, she proceeded with the other person. Heena Shaikh and Chaitali were arrested and granted bail.

4 Learned APP submitted that the involvement of the applicant is supported by evidence. Applicant has been identified in the test identification parade by the victim. Specific overt-act has been attributed to the applicant. The accused had forcible sexual intercourse with the complainant. Aniket is absconding.

5 In the FIR, it is alleged that the complainant had contacted Chaitali at the instance of Heena Shaikh. Chaitali offered her the alleged work of having physical relationship with some person. The complainant declined the offer. However,

surprisingly on the persuasion by Heena Shaikh that it was work of modelling, she was convinced. According to complainant, she went to Diva station alongwith the co-accused. She was taken to one building by the accused Aniket for the purpose of modelling test. However, there was no modelling test. The complainant did not suspect foulplay. At the request of Aniket, she again met him in the evening at about 04:00 to 04:30 p.m. Although Heena Shaikh and Chaitali were with her, Aniket called her alone at Mumbra. The conduct of Aniket was suspicious. The complainant went alone and met Aniket. According to her, she was sexually assaulted by both the accused. The room was allegedly situated in a chawl. Statements of neighbours were not recorded. There is nothing to indicate that victim had protested. There were no fresh injuries. It is not clear as to how name of the applicant was disclosed before his arrest and before he was identified by the complainant in the test identification parade. The parade was conduced on 18th January, 2019. The incident had occurred on 13th November, 2018. The time of incident was between 04:00 to 04:30 p.m. on 13th November, 2018. FIR was lodged on 14th November, 2018 at 20:17 p.m. The version of the complainant speaks volumes of doubt.

6 Considering the factual aspects of the matter, bail can

be granted to the applicant. He is in custody for period of about two years.

7 Hence, I pass the following order:

:: O R D E R ::

(i) Bail Application No.3144 of 2019, is allowed;

(ii) The applicant is directed to be released on bail in connection with C.R.No.I-616 of 2018, registered with Mumbra Police Station, District–Thane, 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 report Mumbra police station, District–Thane once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

(iv) Applicant shall not approach the victim or her relatives and shall not tamper with the evidence in any manner;

(v) Bail Application No.3144 of 2019, stands disposed of accordingly;

This order is corrected vide Speaking to the Minutes order dated 6.01.2021

(vi) This order will be digitally signed by the Private Secretary of this Court. All concerned shall act on production by Fax or E-mail of a digitally signed copy of this order.

(**PRAKASH D. NAIK, J.)**

This order is corrected vide Speaking to the Minutes order dated 6.01.2021