

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

BAIL APPLICATION NO.3601 OF 2019

Deepak Annapa Kunchikurve	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Ms.Anjali Patil, Advocate for the Applicant.

Ms.A.A. Takalkar, APP for Respondent – State.

PSI Thorat, Sion Police Station, Mumbai, 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.127 of 2019, registered with Sion Police Station, Mumbai, for the offence punishable under Section 376 of Indian Penal Code (“IPC”, for short).

2 The case of the prosecution is that the victim is a married lady aged about 37 years. Her sister was admitted in hospital on 2nd May, 2019. The victim was looking after her sister on 10th May, 2019. One unknown person met her and asked about the health condition of the patient. He also inquired whether she

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Aher**

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needs any help. The victim told him that he can help her to reduce the medical expenses of her sister. The unknown person told her to accompany her to the place where the form is to be filled up. He also represented that he is working as a ward boy in the hospital. The victim accompanied him. They went through lift. She followed him. She was taken to O.P.D. Building. She was taken to 5th floor at the vacant place near staircase. The accused caught her hand. The accused committed forcible sexual intercourse with victim. After the incident the accused ran away. The victim approached the police and lodged complaint. Information was given to the police at 19:50 hours and FIR was registered at 09:30 p.m. Applicant was arrested on 11th May, 2019. Test identification parade was conducted on 4th June, 2019. On completion of investigation charge-sheet was filed on 11th November, 2019.

3 Learned advocate for the applicant submitted that the entire case is false. There is delay in holding test identification parade. History provided by the victim do not refer to sexual intercourse. Whereas, the FIR contains the allegation of rape. In the statement recorded under Section 164 of Cr.P.C., the victim has stated that the accused ran away with the bag. In the history

provided to the medical officer, the victim has stated that the accused had ran away with the bag. The victim was suffering from HIV. Report of the accused in respect to HIV test, is negative. The applicant is in custody for more than one and half year. There are no criminal antecedents against the applicant. Medical evidence does not support the prosecution case.

4 Learned APP submits that specific role has been attributed to the applicant. His presence at the scene of offence has been established. CC TV Footage show that the applicant was in company with the victim and after the incident he ran away. Medical examination papers refer to the injury on the person of the applicant. Specific role amounting to the offence under Section 376 of IPC has been alleged against the applicant by the victim. Variation in statement and history given to doctor is on account of illiteracy of victim. The accused had represented him as ward boy although he is not employed at hospital.

5 I have perused the documents. The alleged incident dated 10th May, 2019, had occurred on the vacant place on 5th floor of the hospital. The history provided to the medical officer mentions that accused is stranger to her. He told her about MSW

officer that is on 6th floor O.P.D. Building, where victim wanted to go. He then took her up and latter dragged her to staircase corner and abused her. He tried to do penovaginal intercourse with her. He did fingering. He was about to penetrate, but, he saw police coming upstairs so he left her and ran away. Thus, the history does not refer to sexual intercourse. The medical case paper makes noting on 11th May, 2019, which also refers to version of victim recorded in hospital. This version also refers to history stated above and in addition it is stated that accused snatched her money purse containing Rs.5,000/-, and ran away. Whereas, in the statement dated 10th May, 2019, she referred to forceful sexual intercourse by the accused. The medical case papers also indicate that there is no evidence of injuries suggestive of application of force/restraint. There is reference of one abrasion. There is no CCTV Footage on record showing as to where the victim left after the incident. In the circumstances, case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.3601 of 2019, is allowed;

- (ii) Applicant is directed to be released on bail in connection with C.R.No.127 of 2019, registered with Sion Police Station, Mumbai, 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 the concerned police station 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 contact the victim or her relatives and shall not tamper with the evidence, in any manner;
- (v) Applicant is permitted to furnish cash bail security in the sum of Rs.25,000/-, for a period of six weeks, in lieu of surety;
- (vi) Bail Application No.3601 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)