

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

CRIMINAL BAIL APPLICATION NO.385 OF 2020

Akshay Gangadhar Chtiyala	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Hitesh P. Shah, Advocate for the Applicant.
Mr. Ameet A. Palkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY, 2021
[Through Video Conferencing]

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.15/2019 dated 9.1.2019 registered at Powai police station, Mumbai under Sections 376(2)(m), 324, 506, 328 of the Indian Penal Code.
2. Heard Shri Hitesh Shah, learned counsel for the applicant and Shri Ameet Palkar, learned APP for the State.
3. The Applicant was arrested on 16.1.2019 and

since then he is in custody. The investigation is over and the charge-sheet is already filed. The FIR is lodged by the prosecutrix herself on 9.1.2019. She has stated that at the time of lodging of the FIR, she was 20 years of age. She had got married in May, 2017, but, she had marital discord with her husband. She had come back to reside with her parents. She did not want to return to her matrimonial house. On 11.3.2018, her father dropped her at the bus station at Ghatkopar, but, she did not want to go back to her husband's house. She called the applicant. She did not go to her husband's place. Her father did not know her whereabouts. Therefore, he lodged a complaint about her missing. The informant herself went to Pant Nagar Police Station with the applicant and got that complaint cancelled. Her family refused to take her back. Therefore, the informant stayed with the applicant for one day but, after that, her family allowed her to reside with them. During this period, the informant was in touch with the applicant.

4. On 8.1.2019, at about 10:00 a.m., the applicant

called the informant to Ghatkopar railway station. She went there. Both of them then roamed around in Powai area on the applicant's two-wheeler. He took her to a hotel at Powai Saki Vihar Road at around 1:30 p.m.. The informant herself paid the rent of a room in that hotel through her card. They checked in. They went to the room. It is alleged that the applicant gave her some soft-drink, because of which she felt sleepy. The applicant tried to establish physical relations with her. She kept on refusing, but, he forcibly had physical relations with her. It is alleged that the applicant broke a bottle and she was hurt with it. In the incident, she was assaulted on her hand and leg. After at around 3:30 p.m., both of them left the hotel. She was taken to a hospital at Ghatkopar. He did not allow her to go home. In the meantime, the informant's sister and sister's husband came to know that she was at Ghatkopar. At around 11:30 p.m. they came there. The applicant was still with the informant. There was some fight between the applicant and informant's those two relatives. Then the applicant left the place. It is

mentioned in the FIR that, thereafter, they gave an N.C. complaint at Pant Nagar police station. On the next day, the informant's sister asked her about the incident. That time, the informant told her as to what had happened. After that with the support of her family members this FIR was lodged.

5. Learned counsel for the applicant submitted that it was purely a consensual relationship. The informant herself had made the payment for renting the room in the hotel, which shows her own intentions. He submitted that the injuries allegedly suffered by the informant are in the form of minor abrasions. The informant was under pressure from her family members and, therefore, this FIR is lodged. The FIR itself indicates that the informant's parents and other family members were holding grudge against the applicant.

6. Learned counsel submitted that an N.C. complaint lodged by the informant against the applicant in the midnight, soon after, does not make any reference to the incident of rape. At the highest, it speaks about the slap which the applicant had given. He submitted that on these weak pieces

of evidence the applicant is in custody for a long time and, therefore, he deserves to be released on bail.

7. Learned APP opposed this application. He submitted that there are allegations that the applicant had given some intoxicating substance to the informant and then had committed rape. The medical papers support the informant's case. Therefore, bail should not be granted to the applicant.

8. I have considered these submissions. Besides the FIR, important material is in the form of the statements of staff of the hotel where the couple had rented a room. Both these witnesses i.e. Sudhir Acharya and Pintu Yadav have stated that the informant and the applicant had come to their hotel. The informant had herself given her PAN card for renting that room. The applicant and the informant had ordered soft-drinks. This does show that the informant had willingly accompanied the applicant to the hotel room and had even given her PAN card and had herself paid the rent as mentioned in the FIR itself. Therefore, it is definitely a case

of consensual relationship.

9. As far as the medical evidence is concerned, the result of medical examination mentions that there were multiple sharp cut marks on both arms and abrasion on left thigh. There was a bite mark on the neck.

10. The main allegations are about causing injuries with broken bottle. However, the medical examination and the medical papers of a municipal hospital shows that there was swelling on the cheek and minor abrasions on left arm and left leg. Said observations are on page No.52 to this application. Thus, there is a possibility that those were not the cut injuries but minor injuries though in some papers they are referred to as cut injuries. But, sufficient doubt is created about the nature of injuries. There was no blood on the broken bottle found in the room.

11. Another important aspect in this matter is an N.C. complaint lodged by the sister of the informant at around midnight on 9.1.2019. She has stated that when the

informant was talking with a friend, the applicant got angry and slapped her i.e. the first informant in this case. This explains the swelling on the cheeks, which is a separate incident and it was not connected with the incident which had taken place in the hotel room. Therefore, in this background it does appear that whatever had transpired in the hotel room was with the consent of the informant. Sufficient doubt is created about the exact nature of the injuries.

12. As mentioned earlier, the informant's family was holding grudge against the applicant which cannot be overlooked. Importantly, there is statement of one Afrid Shaikh. He has stated that at about 9:30 p.m. on 8.1.2019, the first informant had called this witness. She was crying and she categorically told him that there was a fight with her sister and she had called this witness to Ghatkopar. This is also an important statement because in this statement the informant has not blamed the applicant but has squarely blamed her own sister.

13. In this background, sufficient doubt is created about the prosecution case. The applicant is already in custody since 16.1.2019. He, therefore, deserves to be released on bail. Hence, the following order :

ORDER

- (i) In connection with C.R.No.15/2019 dated 9.1.2019 registered with Powai police station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Application stands disposed of accordingly.

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by
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DESHMANE
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(SARANG V. KOTWAL, J.)

Deshmane (PS)