

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

BAIL APPLICATION NO. 506 OF 2020

Brahmadev Ramlakhan Upadhyay ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Nitin Pradhan, Sr. Advocate a/w Ms. Ameeta Kuttikrishnan a/w
Ms. Shubhada D. Khot, Advocate for the Applicant.

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

Ms. Tanaji Patil (PSI.) Vanrai Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 8th APRIL, 2021

PER COURT:

1. This is an application for bail in connection with C.R. No. 194 of 2019 registered with Vanrai Police Station, Mumbai for offences under Sections 376, 328, 506 r/w Section 34 of Indian Penal Code (for short “IPC”) and Section 67(A) of Information Technology Act, 2000. The First Information Report (for short ‘FIR’) was registered on 20th August, 2019.

2. The complainant/victim is a lady aged 23 years. According to her, she got acquainted with the wife of the applicant who was her neighbour. In January, 2017, the complainant had fallen kill. She had consulted several doctors and in spite of medication

there was no improvement in her health. The wife of the applicant took victim to Moulana at Malad. Even, thereafter, the complainant was not keeping well. Accused No.3 Babar Ali was her neighbour. The applicant and his wife advised the complainant to perform marriage with Babar Ali. In March, 2017, the complainant was called by the applicant's wife to her house. The applicant had brought beer bottles. She was forced to consume beer. She was frequently threatened about video shooting and forced to perform marriage with Babar Ali. In March, 2017, the accused No.3 - Babar Ali brought beer bottles. They consumed it at the house of the applicant. The complainant was called at their residence. The applicant's wife forced victim to consume beer. Some stupefying substance was mixed in the beer, as a result of which she fell unconscious. When she regained consciousness, she found that she was without any clothes. Babar Ali told her that he had subjected her to sexual assault without her consent and accused No.2 Jainab had recorded video. He showed her the video recording of physical relationship between accused No.3 and the complainant. Accused No.2, Jainab insisted that she should perform marriage with Babar Ali. The complainant refused. She had consumed some phenyl and attempted to commit suicide. She was admitted to hospital. She was threatened. In July, 2017, the victim was sent to Nagpur along with accused No.3. At Nagpur, Babar had

hired room premises and kept the complainant in the said premises. After about month, Babar Ali took the complainant to West Bengal. He had forceful physical relationship with her. He was insisting for marriage. She was again brought to Nagpur. The complainant then managed to go to Uttar Pradesh. In December, 2017, she again went to Goregaon. Thereafter, Babar Ali had started threatening her. The FIR was registered on 20th August, 2019.

3. During the course of investigation, statements of witnesses were recorded. On completing investigation, charge-sheet was filed. The applicant had preferred an application for bail before the Sessions Court. The said application was rejected vide order 15th January, 2020. The applicant, his wife Jainab and accused No.3 Babar Ali are in custody.

4. Learned counsel for the applicant took me through the documents which forms part of charge-sheet. He also pointed out the previous complaint lodged by the victim/complainant against another person. It is submitted that there is inordinate delay in lodging FIR. The overt act of sexual assault is attributed to accused No.3. Although the alleged incident had occurred in March, 2017, the FIR was lodged on 20th August, 2019. The FIR itself indicate that the complainant had accompanied accused No.3 and she had stayed

with him at Nagpur. The alleged shooting of vide as alleged by the complainant is not substantiated by any evidence. The applicant is in custody for substantial period of time. It is further submitted that the complainant had also lodged two FIRs' on 23rd September 2018, and 22nd September, 2018 against one Dinesh Gupta. The said accused was granted anticipatory bail vide order dated 19th July, 2019. While allowing the said application it was observed that there is falsity in the FIR alleging for offence under Section 376 of IPC.

5. Learned APP submitted that the version of the complainant cannot be disbelieved at this stage. Specific overt act has been attributed to the applicant. Statement of the victim was recorded under Section 164 of Cr.P.C. The incident had occurred in the house of the applicant. The applicant and his wife were instigating the complainant to perform marriage with accused No.3. The video shooting of the incident was recorded. The cell phone has been forwarded to forensic examination. The relative of the applicant had threatened the complainant for withdrawal the complaint. N.C. complaints were registered on 24th August, 2019 and 27th August, 2019.

6. I have perused the documents. Undisputedly, the role of sexual assault is not attributed to the applicant. The incident had

occurred in March, 2017. However, FIR was lodged on 20th August, 2019. There is no reason for lodging FIR belatedly. The alleged video shooting was not found in the cell phone. From the FIR it is apparent that in July, 2017, the complainant had accompanied accused No.3 to Nagpur. She stayed with him in the room premises hired by him. Apparently, she had volunteered to be with him. The statement under Section 164 of Cr.PC. does not mention the date of incident. There is no medical evidence to support the allegations that the victim had consumed phenyl and she was treated in the hospital. Investigation is completed and the charge-sheet is filed. Further detention of the applicant is not warranted. Hence, case for grant of bail is made out.

ORDER

- (i) Criminal Bail Application No. 506 of 2020 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 194 of 2019 registered with Vanrai Police Station, Mumbai, on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicant shall not tamper with the evidence.

(v) The applicant shall stay out of vicinity of Kokani Pada, Triveni Nagar, Kurar Village Malad (East), Mumbai, till conclusion of trial.

(vi) The applicant shall furnish the details of his residence after he is released on bail to the Investigating Officer.

(vii) The applicant shall not approach the complainant/victim.

(viii) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.

(ix) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)