

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.685 OF 2020

1. Saden Sherali Ansari, Age 20 years,
r/o.H.No.36, Opp.Rathabai Chawl,
Quresh Nagar, Kasaibada, Bhiwandi,
Thane.

2. Khalid @ Do Batli Maksod Ansari,
r/o.H.No.35, Opp.Rathabai Chawl,
Quresh Nagar, Kasaibada, Bhiwandi,
Thane.

Applicants

versus

The State of Maharashtra

Respondent

Mr.Rajendra Rathod i/by Mr.ali Bubere for applicants.
Mr.H.J.Dedhia, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th June 2021

PC :

1. This is an application for bail. The applicants are arrested on 26th November 2019 in connection with CR No.I-307 of 2019 registered with Nijampur Police Station, District Thane for offences under Sections 376-D, 354A, 323, 450, 506 and 34 of Indian Penal Code.

2. The first informant has alleged that about three months age in August-2019, the applicants who are the neighbours of the victim, had entered into the premises and both of them had subjected her to sexual assault. She was threatened of dire consequences, if she discloses the incident to any person. On 21st November 2019 the victim was ailing and hence she was taken to Doctor by her sister. On examination the doctor had opined that the victim was pregnant. Hence the FIR was lodged on 26th November 2019.

3. Learned advocate for the applicants submitted that the applicants are falsely implicated in this case. There is delay in lodging the FIR. Statement of the victim recorded u/s 164 of Cr.PC does not attribute any allegation of sexual intercourse. The victim is aged about 31 years. The date of incident is not mentioned. If the allegations of the victim are considered with regards to the date on which the incident had occurred, the applicants cannot be held responsible for the alleged pregnancy. The applicant no.1 is aged about 20 years. There are no criminal antecedents against applicants. They are in custody for substantial period of time. There is no progress in trial. The DNA report clearly opines that the applicants are excluded to be the biological father of femur bone of Abortus of the victim.

4. Learned APP submitted that there is no reason to discard the version of the complainant/victim at this stage. In the FIR specific overt act has been attributed to the applicants. The victim is mentally challenged person. The mental health report indicate that the mental age of the victim is of 6 years 9 months. The submissions of learned advocate for applicants cannot be considered at this stage.

5. The FIR was lodged after a period of three months from the date of alleged incident. The exact date of incident has not been mentioned. The DNA report does not support prosecution. The applicants are excluded to be the biological father of femur bone of Abortus of the victim. The statement of the victim was recorded u/s.164 of Cr.PC on 2nd December 2019. The statement does not specifically mention that the victim was subjected to sexual assault.

From the contents of FIR it is apparent that the victim has narrated the incident. The details provided in FIR shows that victim understands the situation. The mental health report mentions that history was provided by the victim. The said history also does not refer to sexual assault. The report further indicate that the victim was conscious, co-operative and communicative. The report also mentions that the victim suffers from Moderate Intellectual Disability (IQ-47) and that her mental age is 6 years 9 months. The DNA report as stated above is not incriminating against applicant. They are in custody from 26th November 2019. Their further detention is not necessary. Bail can be granted to them on certain terms. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicants are directed to be released on bail in connection with I-307 of 2019 registered with Nijampur Police Station, District Thane, on their executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicants shall not approach the victim or her relatives and shall not tamper with evidence;
- (iv) The applicants shall report Nijampur Police Station once in a month on every first Saturday between 11 am and 1 pm for first six months, and thereafter once in three months on first Saturday between 11 am and 1 pm till further orders;
- (v) The applicants are permitted to furnish provisional cash bail in the sum of Rs.25,000/- for eight weeks weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

MST