

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

CRIMINAL BAIL APPLICATION NO.935 OF 2021

Tarachand Angad Thite	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Harshad Bhadbhade, Advocate for the Applicant.
Ms. Pallavi N. Dabholkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.274/2020 registered at Chiplun police station, District-Ratnagiri on 24.11.2020 under Sections 376(2)(n), 366-A, 370(4) of the Indian Penal Code, under Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act and under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act.

2. The Applicant was arrested on 5.12.2020 and since then he is in custody.

3. Heard Shri Harshad Bhadbhade, learned Counsel for the Applicant and Ms. Pallavi Dabholkar, learned APP for the State.

4. The FIR is lodged by the victim herself. She has stated that she was 16 years of age at the time of lodging of the FIR. She was residing at Kolkata. It is mentioned in the FIR that one Wasim who was friend with informant's sister represented to the informant's sister that he would give her a good job in a paper mill. Said Wasim sent two air-tickets for the informant and her sister. On 12.10.2020, they came to Mumbai and then to Chiplun. The informant and her sister were staying with Wasim. He took Rs.70,000/- brought by the informant's sister. On one occasion, when only Wasim and the informant were in the house he committed rape on her. It is alleged that on 22.10.2020, Wasim forcibly took the informant to Kushal Regency hotel. He had threatened that if the informant did not comply with his instructions, he would commit murder of her sister. It is her case that the person who was present in Kushal Regency Hotel committed

forcible sexual intercourse against her wish and thus committed rape on her. On 24.11.2020, she informed this to her sister and then this FIR was lodged.

5. The informant's supplementary statement was recorded on 1.12.2020. There she has stated that between 15.10.2020 to 24.11.2020, many people had committed rape on her in different hotels. The Applicant was arrested and the informant was asked to identify the suspects in a test identification parade. The supplementary statement dated 15.12.2020 recorded after conduct of TI Parade dated 8.12.2020 shows that the victim had identified the present Applicant as one of the persons who had committed rape on the informant at Hotel Green Park. On this basis, the Applicant was arrested and investigation was carried out. The charge-sheet was filed.

6. Learned Counsel for the Applicant relied on the entry in Kushal Regency Hotel wherein there is a mention that the Applicant had occupied a room with one Rafiya. He submitted that the allegations that the Applicant had gone to

said hotel with the informant is not correct because this entry shows that he had gone with one Rafiya and not with the present informant.

7. He further submitted that there was no way that the Applicant would know that the informant was a minor. The allegations at the highest are that he was a customer and the informant had willingly accompanied her customers. He submitted that it is difficult to believe that the offence is committed against her wish or will.

8. Learned A.P.P. opposed this application. She submitted that there is a statement recorded by the informant under Section 164 of Cr.P.C., which supports the prosecution case. She submitted that the offence is serious and the entry in the hotel does not help the Applicant because there is a possibility that he could have visited these hotels on multiple occasions and the Hotel owners are responsible for making this entry.

9. I have considered these submissions and in

particular I have perused the statement given by the informant under Section 164 of Cr.P.C. That statement was recorded on 4.12.2020. In that statement, she has stated that on 15.10.2020, Wasim committed rape on her. It was repeated on the second day. After couple of days, Wasim took her to a hotel in Chiplun market. In that hotel, two persons committed forcible sexual intercourse on her amounting to rape. Same thing was repeated on other dates in different hotels and on one day in all five persons committed rape on her one after the other. She has stated that Wasim used to take her to different hotels and different persons used to commit rape on her. She has given name of one of the hotels as Kushal Regency Hotel. Her statement is clear enough.

10. The informant's statement, her supplementary statement, and her statement recorded under Section 164 of Cr.P.C. as well as the test identification parade show that the Applicant was one of the offenders who had committed rape on the informant. The defence that the Applicant was not aware of the age of the victim does not help the Applicant.

There are clear allegations made by the informant that the accused committed forcible sexual intercourse against her wish.

11. In any case, the informant being below 18 years of age, the question of consent or absence thereof, does not arise at all. The offence is serious. The accused had committed forcible sexual intercourse against her wish, as per her case. At this stage, there is nothing to doubt her statement. Her statement is recorded under Section 164 of Cr.P.C. Therefore, bail cannot be granted to the Applicant, who was identified in the test identification parade by the informant. The Application is, therefore, rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally
signed by
Pradeepkumar
P. Deshmane
Date:
2021.03.24
11:31:31
+0530