

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1217 OF 2021

1. Abdul Hamid Shabbir Ah @
Hamid Chorwa @ Hamid Sethwa
2. Mahammed Sageer Faizulla @
Sageer Kalwa. .. Applicants

Vs.

The State of Maharashtra .. Respondent

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Mr. Mahendra Sandhyanshiv for the Applicants.

Ms. P.N. Dabholkar, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 15TH JULY, 2021.

P.C:-

1. One T.R. Abdul Latif lodged a complaint with Dyane Ramzanpura Police Station, Malegaon, Dist. Nashik, alleging that on 09/11/2018, the Applicants and other co-accused forcibly entered into the house of the victim being the cousin sister of the Complainant, where she along with her husband was present. It is alleged that the accused persons assaulted the informant and demanded a sum of Rs.25,000/- from him and the victim. An

allegation is also levelled on the basis of the information given to him by his cousin sister that she was molested by one person, who came closer to her and moved his hand over her entire body. At that time, another person with dark complexion took photos in his mobile and demanded an amount of Rs.10,000/- otherwise, threatened her that the said picture would be made viral on WhatsApp.

Based on the said statement, offence was registered under Sections 386, 354 (A), 323, 452 read with Section 34 of the IPC.

2. The statement of victim was also recorded on 15/11/2018 where she speaks in sync with the statement of the Complainant dated 14/11/2018. However, in her supplementary statement recorded on 17/11/2018, the victim gives a different version and alleges that she is raped by three accused persons when they entered her house. It is alleged by her that the entire incident of sexual assault was recorded in the form of video and they threatened her to make the video viral unless she pays an amount of Rs.25,000/-. About her first narration, she states that she had falsely stated that the accused had only molested because she was scared and was apprehensive that if she discloses to her husband that she was raped, he would give *talaq* to her. Consequent upon her statement, the supplementary statements of the Complainant and one Imran Ahmed Nihal came to be recorded, which speak of the act of rape being committed upon the prosecutrix.

3. Learned counsel for the Applicant firstly points out to the delay in lodging the FIR and secondly, invites my attention to the improved version in the supplementary statement of the prosecutrix, where for the first time, she alleged that she was raped and an amount of Rs.25,000/- was demanded from her. Learned counsel for the Applicant has placed heavy reliance on the order dated 21/12/2020 passed in the case of co-accused in Criminal Bail Application No.1611 of 2019, who has been assigned a similar role as to the present Applicant.

4. Learned A.P.P. opposes the application on the ground of antecedents and submits that in case of Applicant No.1, there are four cases registered, which include one offence under Section 307 of the IPC whereas, qua Applicant No.2, there are 17 antecedents. When learned counsel for the Applicants was confronted with the said chart, he has placed on record the orders of acquittal in all the four cases in respect of Applicant No.1 and in respect of Applicant No.2, the orders/judgments of acquittal in 16 cases barring Regular Case No.228 of 1996 arising out of C.R. No.146 of 1996 registered with Azadnagar Police Station under Section 400, 401, 120(b) read with Section 34 of the IPC, where he is convicted for seven years. The antecedents of the Applicants, therefore, can be of no ground to deny them their liberty, when the case of the prosecution stands on an improved version of prosecutrix.

5. I have perused the aforesaid order dated 21/12/2020 passed in the case of co-accused Shaikh Imran Shaikh Nazir. Learned Judge of this Court has taken note of the fact that the statement of the victim dated 17/11/2018 is an improvement, where she has alleged that she was sexually assaulted by the accused persons and, based on this improvement, there is an improvement by her husband and the complainant in their supplementary statements. Recording that the supplementary statements completely change the version of the victim and other witnesses, the co-accused was entitled to be released on bail. I see no reason why the very similar reasoning cannot be applied in the case of the Applicants. They too are entitled for being released on bail by following order:

: ORDER :

- (a) The Applicants – (1) Abdul Hamid Shabbir Ah @ Hamid Chorwa @ Hamid Sethwa (2) Mahammed Sageer Faizulla @ Sageer Kalwa, shall be released on bail in C.R. No.63 of 2018 registered with Dyane Ramzanpura Police Station, Malegaon, District Nashik, on executing P.R. bond to the extent of Rs.25,000/- each and furnishing one or two sureties of the like amount.

- (b) The Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicants shall co-operate and attend the trial regularly unless exempted by the Trial Court.
- (d) The Applicants shall not enter the jurisdiction of Dyane Ramzanpura Police Station, Malegaon, Dist. Nashik.
- (e) The Applicants shall provide their residential addresses and telephone numbers to the Investigating Officer and also intimate the changes, if any.

6. The Application is allowed in the aforestated terms.

7. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]