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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1171 OF 2020

Tanaji Narayan Budhe ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Ajit Kenjale a/w Mr. Suraj Bansode for the Applicant.

Mr. Ajay Patil, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 9th SEPTEMBER, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.
2. The applicant has tendered an application praying therein, that the applicant wishes to surrender before this Court and as such, he be taken into custody and after taking him into custody, he be released on regular bail. The said application is taken on record. The applicant, accordingly, was taken into custody. The learned APP was directed to file his say.
3. Learned APP has given his say and has stated that the application be rejected.

4. After taking the applicant into custody, the aforesaid application for bail was taken up for hearing.

5. According to the learned Counsel for the applicant, the applicant was granted pre-arrest bail vide order dated 11th August, 2020. He submits that as chargesheet was filed, this Court vide order dated 25th September, 2020 directed the applicant to approach the Trial Court and accordingly, disposed of the application seeking pre-arrest bail. He submits that pursuant thereto, the applicant approached the Apex Court by filing Special Leave Petition. The said SLP was disposed of by the Apex Court by extending the protection of interim bail to the applicant till such time as his regular bail application was decided by the Trial Court. Learned Counsel for the applicant submits that pursuant thereto, the applicant filed an application in the Sessions Court and sought regular bail, however, the said application was rejected by the learned Additional Sessions Judge, Waduj vide order dated 25th November, 2020. Learned Counsel for the applicant submits that since chargesheet was filed in the said case, during the pendency of the applicant's anticipatory bail application, in which interim protection was granted to the applicant, the question of custodial interrogation nor detention of the applicant was warranted, more particularly when the applicant had *prima facie*, made out a case for grant

of bail. He further submits that having regard to the peculiar facts of this case, the learned Additional Sessions Judge ought to have taken the applicant in custody, by permitting him to surrender in terms of ***Sundeep Kumar Bafna V/s. State of Maharashtra and Another***¹ and thereafter, should have decided his bail application forthwith, having regard to the peculiar facts of the case.

6. Learned APP opposes the application. Learned APP, however, does not dispute the fact, that during the pendency of the applicant's anticipatory bail application, in which he was granted interim protection, chargesheet was filed against him.

7. Perused the papers. After the applicant surrendered, he was taken into custody and thereafter, the applicant's application seeking his enlargement on bail in connection with C.R.No. 217 of 2020, registered with the Vaduj Police Station, Satara, for the alleged offences punishable under Sections 376 and 506 of the Indian Penal Code, was taken up for hearing.

8. According to the prosecutrix, the alleged incident of rape was

¹ (2014) 16 SCC 623

committed by the applicant on 25th June, 2020 at about 12.00 noon in the agricultural field of the applicant. It is alleged by the prosecutrix that she was dragged by the applicant from her field and she was sexually assaulted by the applicant in his field at 12.00 noon. The complaint / FIR was lodged after two days i.e. on 27th June, 2020. Learned Counsel for the applicant submits that the CDR shows the falsity of the complaint/FIR lodged by the prosecutrix, inasmuch as, the CDR record shows, that the applicant was on his mobile phone continuously on 25th June, 2020 between 12.00 noon to 12.30 p.m. Learned APP does not dispute that the CDR shows that the applicant was on his mobile phone from 12.00 noon to 12.30 p.m. The CDR record is annexed to the application, since chargesheet has been filed.

9. Learned Counsel for the applicant submits that the prosecutrix and her husband had conspired to falsely implicate the applicant on these false charges and that the same is evident from the fact, that the FIR was lodged belatedly, on 27th June, 2020. Learned Counsel submits that applicant son's marriage was scheduled on 28th June, 2020 and that the prosecutrix and her husband with malicious intent, lodged a false complaint one day prior to 28th June, 2020 i.e. on 27th June, 2020, so as to implicate the applicant in a false case. Learned Counsel for the applicant submits that the prosecutrix's statement that she was dragged by the

applicant from her field to the applicant's sugarcane field is highly improbable, inasmuch as, the said locality where the incident is alleged to have taken place, is a crowded locality. He submits that a perusal of the medical case papers of the prosecutrix shows that she had not sustained any external injuries on her person, which is highly impossible, if the incident had taken place as alleged by her. The prosecutrix's medical report is on page 70 of the application. From the medical case papers, it appears that no injuries, either external or internal, were found on the prosecutrix. The prosecutrix is aged 30 years and a mother of three children.

10. Learned Counsel for the applicant further submits that the motive for false implication is not only personal rivalry between the applicant and prosecutrix's family, but, also political rivalry between the parties. He submits that the applicant had opposed the appointment of the prosecutrix's husband to the Bhutoba Gramdevat Trust, as a result of which, the prosecutrix and her husband had a grudge as against the applicant. He further submits that the applicant had opposed the name of the prosecutrix's husband for the trust on the ground that he had a criminal background, pursuant to which, the prosecutrix's husband was not appointed as a trustee, and instead one Ramchandra Barkade was appointed as a trustee of the said trust. He submits that hence, the prosecutrix's

husband wanted to teach the applicant a lesson. Learned Counsel for the applicant submits that there was also a road dispute between the applicant and the prosecutrix's husband i.e. the road between them for Ambevade and Palasgaon.

11. Learned Counsel further submits that the incident of sexual assault is stated to have taken place at Budhe vasti, having a population of around 105 people, where all the houses in the said vasti are close to each other. He submits that the scene of the offence where the sexual assault allegedly took place is about 10 feet away from the house of Narayan Barkade and Mahadev Barkade and also from the prosecutrix's house. Vide order dated 11th August, 2020, this Court had granted pre-arrest bail to the applicant. The said order was passed in LD/VC/DIST/ABA/167/2020. After *prima facie* considering the submissions of the learned Counsel for the applicant, the said interim protection was granted on certain terms and conditions including that of reporting to the Investigating Officer of the concerned Police Station on the dates given in the said order. Learned APP does not dispute the fact, that the applicant had attended the Police Station and had co-operated with the investigation.

12. It appears that during the pendency of this application,

chargesheet came to be filed as against the applicant in the Trial Court. When the pre-arrest bail application came up before this Court on 25th September, 2020, this Court disposed of the application after observing that since chargesheet has been filed, the applicant to approach the Trial Court. Accordingly, liberty was granted to the applicant to approach the trial Court. The said order was challenged by the applicant in the Apex Court, by filing a Special Leave Petition. The Apex Court, after hearing the learned Counsel for the petitioner observed that ends of justice would be served by extending the protection of interim bail to the petitioner till such time as his regular bail application is decided by the Trial Court. Accordingly, applicant was granted 15 days time to file an application and accordingly, the Special Leave Petition was disposed of. Pursuant thereto, the applicant filed Criminal Bail Application No. 287 of 2020 in the Sessions Court. The learned Sessions Judge after hearing the parties, rejected the said application vide order dated 25th November, 2020 after observing that the possibility of the applicant pressurizing the prosecutrix cannot be ruled out and that the offence alleged was a serious offence.

13. Having heard the learned Counsel for the applicant and the learned APP and having regard to the peculiar facts of this case as stated aforesaid, and the fact that chargesheet has been filed in the said case

during the pendency of the applicant's anticipatory bail application, in which, interim protection was granted to the applicant, the applicant has *prima facie*, made out a case for grant of bail. Accordingly, the application is allowed and the applicant is enlarged on bail on the following terms and conditions;

ORDER

- (i) The applicant be released on cash bail in the sum of Rs. 20,000/- , for a period of eight weeks;
- (ii) The applicant shall furnish PR Bond in the sum of Rs. 20,000/-, with one or two sureties in the like amount, within a period of eight weeks of his release on cash bail, before the appropriate Court (C.R.No.217 of 2020 registered with the Vaduj Police Station);
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial

and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

14. The application is accordingly disposed of in the aforesaid terms.

15. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

16. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.