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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2757 OF 2021

1. Laxman Govind Sutar	
2. Dayanand Keraba Kamble	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. S.A.Ingawale a/w Anand Patil for the Applicants.

Mr. H.J.Dedhia, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 12th OCTOBER, 2021

P.C. :

1. Heard the learned Counsel for the parties.

2. By this application, the applicants seek their enlargement on bail in connection with C.R.No. 139 of 2020 registered with the Nesari Police Station, Taluka Gadhinglaj, District Kolhapur, for the alleged offences punishable under Sections 376, 506 r/w 34 of the Indian Penal Code and under Section 3(1)(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.

3. Learned Counsel for the applicants submits that the incident of sexual abuse by the main accused Balu Dalvi is alleged to have taken place from 2014 to January, 2020 and that, after almost six years, the aforesaid FIR was lodged. He submits that the allegations in the FIR are essentially as against Balu Dalvi and not against the applicants. According to the learned Counsel, the complainant and her sister have named the applicants in the supplementary statement and in their 164 statement, however, there are no allegations of sexual assault by the said applicants. He submits that the allegations in the supplementary statement of the complainant as well as in her 164 statement, are that the applicants held the prosecutrix's hands, when black magic was being performed and when Balu Dalvi (original accused No.1) sexually assaulted the complainant.

4. Learned APP opposes the application. He submits that the allegations as against the applicants are serious and that the applicants had taken advantage of the complainant as well as her sister. He submits that the possibility of the applicants' tampering with the witnesses and influencing them, also cannot be ruled out.

5. Perused the papers. The complainant/prosecutrix has stated that as she was having family problems, she met Balu Dalvi (original

accused No.1) who was into black magic, for resolving her problems, in December, 2014. She has stated that Balu Dalvi came to her house and disclosed that there was hidden gold treasure in the house and that he would help to find that gold. She has further stated that Balu Dalvi (original accused No.1) also told her that he was an incarnation of Balumama. It is alleged by the complainant/prosecutrix that the applicants had helped Balu Dalvi (original accused No.1) in not only performing black magic, but, had helped Balu Dalvi when he sexually exploited the prosecutrix.

6. No doubt, in the FIR lodged by the complainant/prosecutrix, applicant No.2 has not been named, however, in the supplementary statement, applicant No.2 – Dayanand Kamble has also been named alongwith applicant No.1 – Laxman Sutar and Balu Dalvi (original accused No.1). The supplementary statement of the prosecutrix dated 6th January, 2021 as well as the 164 statement of the complainant clearly shows the applicants' complicity in the alleged offence. The complainant/prosecutrix in the said statement has stated that the applicants were present when Balu Dalvi was performing black magic and when she was sexually assaulted by Balu Dalvi (original accused No.1). She has stated that when she regained consciousness, she saw that the applicants were holding her hand. The

complainant/prosecutrix has in detail set out the manner in which, Balu Dalvi intoxicated her with something and thereafter, sexually assaulted her. The complainant's sister was also sexually exploited by Balu Dalvi. She has also stated in her supplementary statement and 164 statement how the incident had taken place. The complainant's sister has also disclosed the presence of the applicants when black magic was performed.

7. Learned APP states that after the complainant shifted to Gadhinglaj, the applicants alongwith Balu Dalvi (original accused No.1) threatened the complainant. The possibility of the applicants tampering with the witnesses and threatening them cannot be ruled out.

8. Prima facie, it appears that the applicants alongwith Balu Dalvi had taken undue advantage of the vulnerability of the complainant and her sister because of their family issues, by resorting to black magic, for solving the problems. Balu Dalvi also sexually exploited the complainant/prosecutrix and her sister. The applicants are stated to have held the prosecutrix's hand when Balu Dalvi sexually exploited the complainant. The applicants role is clearly spelt out by both, the complainant and her sister in the said offence.

9. Considering the aforesaid, this is not a fit case to enlarge the applicants, on bail. The possibility of the applicant tampering with the complainant/witnesses and threatening them, also cannot be ruled out.

10. Hence, the bail application is accordingly stands rejected.

11. 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.

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

REVATI MOHITE DERE, J.