

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

CRIMINAL BAIL APPLICATION NO.1379 OF 2020

Hafizurali Ahmed Ali Dafedar

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Ms. Anjali Patil, Advocate for the Applicant.

Mr. S. H. Yadav, APP for the Respondent-State.

PSI Sandesh Bhise, Tilaknagar Police Station is present.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th JANUARY, 2021

[Through Video Conference]

P.C. :

1. Leave to amend, to correct C.R. number in prayer clause (I), is granted. Amendment to be carried out forthwith.

2. The Applicant is seeking his release on bail in connection with C.R.No.453/2019 dated 22.11.2019 registered at Tilak Nagar police station, Mumbai under Sections 366, 376-D & 376 of the Indian Penal Code. The applicant is arrested on 27.11.2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

3. Heard Ms. Anjali Patil, learned Counsel for the Applicant and Shri S. H. Yadav, learned APP for the State.

4. The FIR is lodged by the prosecutrix herself. She was 35 years of age at the time of lodging of FIR. The prosecutrix was not supported by any of her family members and, therefore, she had left her house. She came to Lokmanya Tilak Terminus, Mumbai on 19.11.2019. She waited at the railway station. She was having fever. Two unknown persons approached her. They gave her food and water. During the same night, those two persons again met her. Both of them committed rape on her in the same area. She did not raise any shouts. On 20.11.2019, another person came near her in the night and he also committed rape on her in the same area. On 21.11.2019, she was just lying in that area. Some ladies came there. They asked her about her condition. That time, the prosecutrix informed them about the offences committed by the unknown persons. Thereafter the police approached her and her FIR was lodged.

5. The investigation was carried out and the Applicant was arrested.

Submissions :

6. Learned Counsel for the Applicant submitted that there is hardly any evidence against the present Applicant. The only possible evidence which could have connected him with the offence was that of test identification parade. But, the Applicant is not identified by the prosecutrix and, therefore, there is absolutely no evidence against the present Applicant. She submitted that there is some reference to the Applicant's name in a statement given by one Raju Sonawane. However, even this witness has not known the Applicant personally and no test identification parade is held to enable this witness to identify this Applicant. She submitted that in these circumstances, the Applicant deserves to be released on bail.

7. Learned A.P.P. Shri Yadav, on the other hand, relied on the statement of Raju Sonawane. He also submitted that there is CCTV footage of the area for the relevant time. Shri Yadav, however, fairly submitted on instructions that the CCTV footage was not clear and, therefore, it was not part of the charge-sheet. He submitted that the offence is serious and the Applicant should

not be released on bail.

Reasons :

8. With the assistance of both learned Counsel, I have gone through the entire charge-sheet annexed to this Application. The prosecutrix has mentioned instances of rape committed by the accused on two different occasions. Her evidence is the most crucial piece of evidence in this case.

9. The prosecutrix was made to identify the suspects in the test identification parade held on 7.1.2020. At that time, she identified one of the accused named Dipu Gianchand Gautam. She has not identified other suspects, namely, Abdul Shaikh and the present Applicant. Thus the prosecutrix's evidence does not establish connection of the present Applicant with the offence alleged against him.

10. The statement of Raju Sonawane shows that he was knowing one Abdul. He was accompanied by one more person, who was resident of the same area. He had seen Abdul sleeping near the prosecutrix. The other person accompanying Abdul slept with her after some time. According to this witness, he asked

Abdul about the person accompanying him. At that time, Abdul had told this witness that the name of that person was Hafizurali. Thus, the prosecution is trying to connect the present Applicant with the crime because the Applicant's name was also Hafizurali.

11. In this case, Raju Sonawane was definitely not knowing the person accompanying Abdul. Therefore, it was necessary for the investigating agency to have held test identification parade to enable him to identify the suspect who was accompanying said Abdul. This was not done. The test identification parade was not held to enable Raju Sonawane to identify that other person accompanying Abdul. The prosecution is relying on the information given by Abdul to this witness to establish that the person accompanying Abdul was none other than the Applicant. However, this evidence is weak in nature in the absence of any test identification parade.

12. Considering all these aspects, there is hardly any evidence against the present Applicant connecting him with the alleged offence. Therefore, the Applicant deserves to be released on bail.

13. Hence, the following order :

ORDER

- (i) In connection with C.R.No.453/2019 registered with Tilak Nagar police station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station once every fortnight, till conclusion of the trial.
- (iii) Criminal Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)