

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

CRIMINAL BAIL APPLICATION NO.1382 OF 2020

Khurshid Ahmed Abdul Hakim Applicant
Versus
The State of Maharashtra & Anr Respondents

Mr. Jayendra D. Khairnar, Advocate for the Applicant.

Mr. Ajay Patil, APP for the Respondent-State.

Mr. S.S. Wagh, Advocate for Respondent No.2.

CORAM: SARANG V. KOTWAL, J.

DATE : 25th JUNE, 2021

[Through Video Conferencing]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.33/2020 registered at Azad Nagar Police Station, Malegaon, on 22.3.2020, under Section 376(2)(d)(j) and (n) of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children From Sexual Offences Act. The Applicant was arrested on 22.3.2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The first informant is represented through

her sister. The first informant is a minor girl of 17 years of age. Her sister representing her is major and, therefore, she has filed appearance for respondent No.2 along with an affidavit. In that affidavit the original complainant has given consent for granting bail to the applicant in this case. This is an important aspect and, therefore, I have noted it. However, I have decided the matter on merits keeping in mind the no objection given by respondent No.2.

3. Heard Shri Jayendra Khairnar, learned Counsel for the Applicant, Shri Ajay Patil, learned APP for the State and Shri S.S. Wagh, learned Counsel for Respondent No.2.

4. The FIR is lodged by the victim. She has stated that she was residing with her elder sister at Manmad. She was taking religious education at a Madarasa in Malegaon. The present applicant was a care taker in the said Madarasa and his wife was a cook.

5. On 20.12.2019, the victim had come back from a trip to Ajmer. After that day she felt drowsy frequently. She was sleeping a sound sleep throughout the night but when she used to wake up she used to feel pain in her abdomen and she was feeling weak. On 6/3/2020. The applicant and his daughter took her for medical treatment to a Hakim. The victim was given some medicine. The victim felt sleepy. She went to sleep in a lower room. The applicant and his wife were also sleeping in the same room. In the night, suddenly she woke up. It is mentioned in the FIR that at that time she saw that the applicant was over her and she had pains in her private parts but she again felt sleepy and she went to sleep. On the next day again she felt pain in her abdomen. Since her health did not improve she was taken to Sindhu Hospital. The doctor attached to that hospital told the victim that she was pregnant and since she was minor she was advised to lodge FIR. After this, the victim lodged her FIR taking help of her

elder sister. The investigation was carried out. Based on these allegations, the applicant was arrested.

6. Learned counsel for the applicant submitted that there are no allegations made with certainty of commission of rape. The story is based on some vague feeling which the victim had. The contention that she was pregnant is falsified by the medical report and the certificate given by the concerned medical officer mentioning that the victim was not pregnant. He, submitted that there is no evidence against the present applicant and, therefore, the applicant deserves to be released on bail.

7. Learned APP relied on the statements of the victim mentioned in the FIR as well as in the supplementary statement recorded on 26.3.2020 to oppose this application.

8. I have considered these submissions and also the stand taken by respondent No.2. Apart from no objection given by respondent No.2 for granting bail, even otherwise there is no sufficient evidence

against the present applicant. The allegations were based on some vague feeling entertained by the victim. There are no direction allegations of commission of rape by the present applicant. Though there is some vague reference that he was over her person at one instance.

9. The medical examination of the victim had revealed that the victim was not pregnant. In fact the statement of the concerned Medical Officer Dr. Patil mentioned that she had not carried out any pregnancy test on the victim.

10. All these factors indicate that there is sufficient doubt against the prosecution case. Therefore, the applicant deserves to be released on bail. It is made clear that all the observations are made only for the purpose of deciding this bail application. The trial Court shall not be influenced by any of the observations made in this order while deciding the trial.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No.33/2020 registered with Azad Nagar Police Station, Malegaon, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)