

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

BAIL APPLICATION NO. 1494 OF 2020

Mangesh Harshnath Yadav	... Applicant
Versus	
The State of Maharashtra	... Respondent

**ALONG WITH
BAIL APPLICATION NO. 1329 OF 2020**

Abhishek S. Dubey	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Ms. Anjali Patil, Advocate for the applicants.
Mr. S. S. Pednekar, APP for the Respondent – State.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	23rd MARCH, 2021

PER COURT:

1. In both these applications, applicants are arrested on 26th January, 2020 in connection with C.R. No. 36 of 2020 registered with Jogeshwari Police Station, Mumbai for offences under Section 376(d), 323 & 506 of Indian Penal Code. The First Information Report (for short 'FIR') was registered on 24th January, 2020.

2. The complainant is a married lady. Accused No.1 is the husband of complainant. According to her on 29th November, 2019 she left with husband from Virar Station at about 8.00 p.m. They

boarded train at Virar Station and alighted at Jogeshwari Station. They reached Virar Station at about 11.00 p.m. Both of them came out of the station. They were talking to each other. At that time two persons came on motorcycle. They called the husband of applicant. They had talk with each other. They gave one motorcycle to the complainant's husband. Thereafter, the complainant and her husband followed them on motorcycle. Both of them went to the premises in a chawl at about 11.30 p.m. All of them went to room. Complainant's husband introduced the other persons. The name of one of them was Mangesh Yadav. Both the persons had sexual intercourse with complainant. She was threatened. Thereafter all of them went to Andheri railway station at 2.30 a.m. After about 10 to 12 days, husband again told her that they should again go to Jogeshwari. The husband was harassing her and threatening her of divorce. On 4th January, 2020 complainant went to her parental home.

3. Learned counsel for the applicants submitted that the entire case of the complainant is false. There is delay in lodging in FIR. History given to doctor is contradictory. No identification parade was conducted to connect applicants. Further statement of complainant was not recorded to confirm identity of applicants. Statements of other witnesses are contradictory.

4. Learned APP submitted that the victim has attributed specific role to all the accused. The husband of the complainant and Mangesh Yadav has been named by her. The statement of the one of the witness refers to the fact that in the night of incident all of them were seen together. The statement of the victim under Section 164 of Cr.P.C. supports the prosecution case.

5. I have perused the FIR and the statement of witnesses. The alleged incident had occurred in the night of 29th November, 2019. FIR was registered on 24th January, 2020. Complainant had not disclosed the incident to her parents or any other person immediately after the incident. According to complainant she left with her husband (accused No.1) in the night of 29th November, 2019 for watching movie. They boarded train at Virar at about 8.00 p.m. They reached Jogeshwari at about 11.00 p.m. Thus it took three hours to reach Jogeshwari. Thereafter, the accused No.1 and the victim had followed the other accused who were unknown to complainant. The version of the complainant that they had left for watching movie at about 8.00 p.m. from Virar Station to Jogeshwari and they had reached at 11.00 p.m. appears to be doubtful. Supplementary statement of the complainant was recorded. She has stated that she was having love affair with accused No.1 (Husband)

before marriage. From 2013 to 2019 both of them had visited lodge and there was physical relationship between them on several occasions. They performed marriage on 19th May, 2019. Statement of father of victim was recorded on 28th January, 2020. He stated that the victim had visited their house on 4th January, 2020. She had disclosed about incident to her mother. He went to Police Station for lodging complaint. The statement of complainant's mother is similar. During investigation the statement of the mother of accused No.1 was also recorded. She stated that on 29th November, 2019, complainant and accused No.1 left house at 8.00 p.m for watching movie. On 4th January, 2020 complainant and accused No.1 had quarrel and she went to her parents house. Pradip Saini has stated that, on 29th November, 2019 at about 11.00 p.m. he saw Abhishek, Mangesh and one boy and girl together going towards house of Abhishek. This statement was recorded on 31st January, 2020. There is no confirmation by further statement that accused No.1 and complainant were accompanying Mangesh and Abhishek. In the history complainant has stated that on 29th November, 2019 at about 8.30 p.m. her husband asked her to come outside for drive and they went to Jogeshwari (East) Station where they met his friends Mangesh and another person whose name is not known. This version is contrary to her complaint and supplementary statement. During

the course of investigation, Whats-app chats between the accused were also recovered which forms the part of charge-sheet. There is no parole or further statement of complainant to confirm identity of accused. In these circumstances as stated above all the statements of witnesses creates doubt about the version of the complainant. The applicants are in custody from the date of arrest. Further detention of the applicants is not necessary. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application Nos. 1494 of 2020 and 1329 of 2020 are allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R. No. 36 of 2020 registered with Jogeshwari Police Station, Mumbai on executing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicants are permitted to furnish provisional cash bail security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (v) Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)