

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3040 OF 2021

SACHIN LALTAPRASAD SHARMA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Purwant a/w. Mr.Mohammad Mulla, Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 22nd NOVEMBER 2021
PRONOUNCED ON : 29th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.499 of 2020 registered with Police Station Panvel Town, for offences punishable under Section 376 and 506 of the Indian Penal Code (IPC).

AVK

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2 The prosecution case in nutshell is that informant (prosecutrix – victim) who is resident of District Jaspur, Chattisgarh and had attraction of big cities like Delhi, Mumbai and wanted to celebrate festivals like Christmas and New year in such big cities, with permission of her mother, went to Delhi alone. At the relevant time, she was 18 years 2 months old. From Delhi she landed to Bandra Railway Station. However, Railway Ticket Checker found her alone and handed her over to Child Help Line and she was taken to Sakhi Girls Protection Home, namely, Sakhi Center.

3 On 27th December 2020 she had been to Panvel Railway Station and was waiting for an auto rickshaw and accordingly, she stopped one auto rickshaw and requested the driver of the said auto rickshaw, who is applicant herein, to drop her to Panvel Bus Stop. The applicant then started asking about her whereabouts and came to know that the victim had come alone from Chattisgarh. The applicant took her to a garden. When the victim asked as to why she had been taken to garden,

the applicant replied that they would chitchat for sometime. Both of them were there for quite a long time. Thereafter, the applicant told victim that he would now drop her at Bus stop and on the way to bus stop he stopped the auto rickshaw near a liquor shop and bought a bottle of beer. From there the applicant took the victim to a river bank which was at the side of a crematorium ground. He then opened the beer bottle and consumed beer and started fiddling with her body. When the victim resisted, the applicant took her out forcibly from the auto rickshaw and took her behind a toilet which was near the said crematorium ground. It is further alleged that the applicant forced himself after removing his pants and her undergarments and when the victim tried to raise commotion, the applicant picked up a stone and threatened to kill her and then ravished her. The victim thereafter, under the pretext of attending call of nature, in a half naked condition ran away. A woman saw her half naked and gave her dupatta to cover her body and thereafter the people who had gathered there, took her to the police station where she lodged the report.

4 Mr.Purwant, learned counsel for the applicant, submits that the First Information Report (FIR) would reveal that the victim has a habit of getting associated with random and completely unknown people since her arrival in Panvel. She was major on the date of the alleged incident. The learned counsel also invited my attention to the statement of Prakash @ Shiva Kalappa Gaikwad who on the date of incident was along with the victim at Panvel Railway Station. According to the learned counsel, although the victim has stated in her report that after she came out from the washroom she did not find Shiva and therefore, she took a auto rickshaw and went away, the statement of Shiva shows that when he came out of the washroom, he did not find the victim.

5 Mr.Palkar, learned APP, on the other hand, vehemently opposed the submissions by contending that not only the FIR but there are statements of eye witnesses, namely, Amar Bhaurao Mhatre and Vikram Prakash Kodag, who support the version of victim. The learned APP then invited my attention to the Medical

Certificate issued by Subdistrict Hospital, Panvel and submitted that medical evidence also suggests that the victim was sexually assaulted. Having regard to the seriousness of offence and the fact that there is overwhelming evidence, the application is liable to be rejected, argued learned APP.

6 Perused the investigation papers. The victim has stated in her report that after she came out from the washroom she did not find Shiva and therefore, she took a auto rickshaw and went away, the statement of Shiva shows that when he came out of the washroom, he did not find the victim.

7 Be that as it may, the same will not, in any manner, affect the case of prosecution, in as much as, the victim has come up with a very clear case that after she stepped out of the Panvel Railway Station, she stopped the auto rickshaw of the applicant and requested him to drop her at Panvel Bus stop. It is also clear from her report that firstly she was taken to the garden and from there to the place of occurrence. In between, the applicant had

stopped his auto rickshaw near a liquor shop and bought a bottle of beer. It is also clear that, thereafter, the applicant started showing his intention when he removed the clothes of the victim and when she resisted, he threatened to kill her by picking up a stone. It is at that moment, he ravished the victim.

8 There are statement of prosecution witnesses, namely, Amar Bhaurao Mhatre and Vikram Prakash Kodag. The statement of Amar Mhatre clearly shows that on 27th December 2020, at about 9 p.m., while he was proceeding towards his house on his motorcycle near the cremation ground, he saw a half naked girl and there were 3 to 4 men and one woman. The girl was crying loudly and was saying that she intends to go to Police Station. A woman, who was near her, then gave her a dupatta to cover her body. Similar is the statement of Vikram Prakash Kodag.

9 From the above statements, it is very clear that the witnesses had seen the victim in a half naked condition. She was

crying and telling that she wants to go to police station. It is also clear from their statement that the woman near the girl gave her dupatta to the victim to cover her body.

10 The medical evidence also supports the prosecution theory. The opinion of the Medical Officer is as under :

- (i) Evidence of recent penetrative vaginal sexual intercourse
- (ii) No evidence of injuries over body of the victim girl
- (iii) The age of victim girl is 18 to 19 (eighteen to nineteen years)

Thus, it is quite clear from the Medical Report that there was evidence of recent penetrative vaginal sexual intercourse.

11 It is also pertinent from record that the applicant was arrested on 28th December 2020, at about 22.27 p.m. i.e. immediately on the next day of the incident.

12 Thus, there is overwhelming evidence against the applicant. Having regard to the material on record, in my

considered opinion, the applicant does not deserve to be enlarged on bail. Hence, I pass the following order :

ORDER

- (i) The application is rejected.
- (ii) The trial Court to expedite the trial.
- (iii) The application stands disposed off accordingly.

(V. G. BISHT, J.)