

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2788 of 2019

Anil Mohan Aaglave

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Aniket Nikam with Mr. Vivek N. Arote for the applicant.
Ms.Sharmila S. Kaushik, APP for the State.

CORAM : BHARATI DANGRE, J.

DATED : 28th APRIL, 2021

P.C:-

1 The applicant came to be arrested on 19th May 2018 in connection with C.R.No. 371 of 2018 registered with Hadapsar police station invoking offences punishable under Section 376(2)(I), 376D, 377, 452, 323, 506(2) of IPC. By the present application, he seek his release on bail on the ground that though the charge-sheet in the said C.R is filed, he is entitled to be released on bail in absence of any cogent material compiled in the charge-sheet, corroborating the accusation. The submission advanced on behalf of the applicant is innocence and false implication in the crime and moreover, since the investigation is complete, he need not remain incarcerated.

Further reliance is also placed on an order passed by this Court in case of Shubham Jadhav, and another accused Akash

Suryawanshi who has been released on bail by the Addl. Sessions Judge, Pune.

2 Placing heavy reliance, the said two orders, the learned counsel Mr.Aniket Nikam would submit that since there is no iota of evidence on the basis of which the elements of the offences with which the applicant is charged are attracted, awaiting the trial, is entitled to be released on bail. I have also heard the learned APP Ms.Sharmila Kaushik for the State, who has painstakingly taken me through the charge-sheet and the material contained therein, implicating the present applicant and she would urge that the offence alleged to have been committed against the victim girl who is mentally retarded, is a serious offence which do not allow the applicant to be released on bail in light of his involvement in the crime.

3 On 6th April 2018, an FIR came to be lodged in the Hadapsar police station by sister-in-law of the victim girl, a resident of a posh Society located in the prime area of Hadapsar, Pune. The complainant alleged that she is residing in the society with her husband and both of them are engaged in service, and her sister-in-law, aged 21 years who is mentally retarded also co-habit with them in the same house. Stating that her husband leaves home at 12 in the afternoon and return back by 12 midnight, whereas, since she is working as a software engineer,

she leave her house at 10.30 am and return by 8.00 p.m, while the couple is out of the house, the victim girl along with the complainant's young son stay in the house along with one maid who is present, throughout the day.

4 The complainant allege that on 5th April 2018, the victim girl was found whimpering and when asked, she stated that accused no.1 Pankaj visited their house at times and forcibly established physical relationship with her. When probed, the victim girl disclosed that in the month of November 2017, accused no.1 had approached her and after taking her mobile number, used to make calls to her and he expressed his feelings towards her, despite that the victim girl refused to pay any heed to his advances. It is narrated by the victim that on 17th February 2018, when she was alone in the house and the door of the flat was open, the accused no.1 Pankaj gained an entry into the flat and after expressing his love towards her, forcibly carried her in the bed-room and after assaulting her, sexually ravaged her. He also threatened the victim that this incident should not be disclosed to her brother or his wife, otherwise she would be done away with. The victim girl also narrated that the accused no.1 was visiting the house on one or two occasions in a week, taking advantage of the fact that nobody was present and used to forcibly impose himself upon her. Being threatened with dire consequences, the victim girl had not disclosed the incident to

anyone. The last incident reported was of 4th April 2018 and thereafter, the victim girl narrated the incident to the complainant which, prompted her to lodge a complaint with the police station. Offence under Section 376(2)(l) along with Section 452, 323, 506 of the IPC came to be invoked. The accused no.1 was indicted in the said C.R.

5 The investigating machinery was set into motion and the accused no.1 was arrested. The victim girl was referred for medical examination. The medical report dated 10th April 2018, on being referred to Sassoon General Hospital, record that the girl has a delayed developmental issue with the milestones in age impaired along with speech and adaptive communication skills being underdeveloped. The disorder was noticed since childhood. The medical papers also reveal that though there is no history of behavioral disturbances, it record as under :-

*“..... general function of knowledge – poor
Can’t do simple transactions
Can’t tell name of country”*

The victim girl was referred to Clinical Psychologist who make the following observation:

“A 21 year old girl brought by brother and Police Constable for purpose of IQ assessment. The IQ Assessment was done. D.A.T was administered. She obtained score of IQ-59, indicative of mild mental retardation.”

6 The medico-legal examination of the victim was carried on 7th April 2018, where the history is given by the victim girl that she was forcefully and sexually harassed by the accused and there were multiple inter-courses against her wish and the last one was on 4th April 2018 in the evening. The opinion recorded on medical examination reads as under :-

“From history and clinical examination, there is evidence of vaginal penetrative inter-course though no evidence of inflammation or injury on any other body part”.

The said report also referred to multiple old hymenal tear at 3, 6, 9 ‘O clock.

7 The complainant got her supplementary statement recorded on 8th May 2018 when the victim girl narrated to her that she was subjected to sexual inter-course by several other persons, apart from Pankaj Thakur who was named in the first complaint. In the supplementary statement recorded on 8th May 2018, the complainant stated that when further inquiry was made with the victim girl, she narrated to her that apart from Pankaj, some other boys had indulged with her through physical relationship. She narrated that during Diwali in the year 2017, her phone was snatched by one boy and he used to make phone calls to her repeatedly. She referred of an incident when she went for morning walk outside the building. At that time, the person who had taken her mobile phone was accompanied with three

other boys who led her to the terrace of the Society and two of the boys kept guarding on the ground floor of the building, whereas two boys physically forced themselves upon her and also threatened her that she should not disclose the incident to anyone. After their turn was over, the two boys who were guarding came up and took turns with her. Being threatened, the victim did not disclose this incident. She narrated about an incident which took place between 15th to 20th February 2018, when the maid servant had left for home, all the four boys barged an entry into the house and took turns with her and established physical relationship. On one of the days, she was called downstairs and was made to sit on a bike and later on, escorted in a white colour car at some unknown place where she was again subjected to sexual inter-course turn by turn and after the act was over, she was brought back into the Society. The complainant made serious attempts so that the victim girl could recognize the make of the car and she related the car to be a Scorpio. Since the terrace was locked, the complainant also asked as to how the boys had access to the terrace and she informed that they had keys with them and in the backdrop of the said incident, she stated that approximately 11 persons had forcibly committed sexual inter-course against her will and she drew sketches of the said persons, which were handed by the complainant to the Investigating Officer. The complainant also referred to one mobile number in her statement i.e. the number on which the accused no.1 was

repeatedly calling her, when the complainant spoke to the person on the other end, he tendered an apology.

8 The statement of the victim girl was also recorded on 9th May 2018 and she narrated her ordeal by stating that Pankaj, Suraj Dadhiwala (a person with beard), chaviwala (a person with keys) and their friends used to commit forcible sexual inter-course with her on the terrace and also by entering into her house, when nobody was at home. On being asked as to why she did not narrate the incident to anyone in the house, she stated that she was threatened with dire consequences if she disclose the incident to anyone.

9 During the course of investigation, the CCTV footage from the cameras fitted in the building for two days being 3/4/2018 and 4/4/2018 was sought from the security in-charge. Similarly, the Register of entry of visitors and the entrance of the building was taken into possession.

10 The applicant was indicted as an accused based on the supplementary statement of the complainant and the statement of the victim girl. Total 7 persons came to be arrested in connection to the offence. During the course of investigation, statements of several persons came to be recorded and were compiled in the charge-sheet which was filed invoking Section 376(2)(l) and

376D of IPC along with other relevant sections.

11 The charge-sheet contain several statements and distinct material which implicate the present applicant. The statement of one Akshay Thorat is recorded on 14th May 2018. She has disclosed that he is engaged in the work of releasing water in different societies in the vicinity where the victim girl was residing with the complainant. He has stated that there were about 12 to 13 boys who were engaged in the activity and he was acquainted with Omkar Bhise, one of the accused. In January 2018, Omkar Bhise had pointed out to him a girl residing in Cosmos Society and told him that he had close proximity with the said girl and also informed him that if he want to have sex with the said girl, he can arrange for that as, this girl is mentally unstable and she allow anyone and everyone to establish physical relationship. Omkar disclosed to Akshay that a common acquaintance – Anil i.e. the present applicant along with his other friends had established relationship with her on the terrace of the building on several occasions. Akshay, however, state that he declined the offer and did not entertain Omkar.

Similar statement is of one Umesh Kharade and Omkar had disclosed to him about the victim girl and that she permit to have sexual inter-course and if he was desirous, he would arrange.

12 Apart from this statement, the Test Identification Parade was conducted where the victim girl identified the present. The Memorandum of Test Identification Parade is compiled in the charge-sheet.

 With this incriminating material being compiled, when the charge-sheet is perused in the light of the submission of Mr.Nikam to the effect that the said Society in which the victim girl was residing, is a high-end society and there are CCTV cameras fitted everywhere and at the entry point, an outsider has to enter his name in the Register before he gain entry into the building, perusal of the charge-sheet would reveal the statements of the security guards being included posted in the society. This include one Firoz Shaikh who state that there are several water men i.e. the persons who offer their services for release of water and they have an access to the terrace and the Security Guard hand over the keys to these boys. The security guard has further given a statement that the name of these boys who worked as water man are not entered into the entry register at gate. The two accused persons Omkar and Akash, who were working as water men are known to the security guards who were visiting the Society, where the victim was residing. Statement of Walmiki Bhise and Umakant Shinde who were working as Security Guards are compiled in the charge-sheet. These statements offer an answer to the submission of Mr.Nikam as to why the name of the water- men do not find entered in the entry Register. Further, the

additional affidavit which is filed by the Investigating Officer on 6th March 2021 disclose that the CCTV footage for the earlier days could not be obtained as the recording of the CCTV footage is available in the system only for 7 days as the system operates on auto deletion mode. However, the CCTV footage of 3/4/2018 and 4/4/2018 is obtained where the accused Pankaj is seen entering the building.

13 The applicant is not entitled to claim any parity with Shubham and Akash, the co-accused in the crime since they are not identified in the T.I. Parade, whereas the applicant is specifically identified in the Test Identification Parade by the victim girl. Though it is settled position of law that Test Identification Parade is not a substantive piece of evidence and conviction cannot be based solely on the identification of the accused in Test Identification Parade, it is also well settled that at the stage of investigation, Test Identification Parade plays an important role in identifying the accused and it would require corroboration during trial. The material compiled in the charge-sheet in form of statements recorded, would turn it to evidence at the time of trial and therefore, the identification of the applicant by the victim in the T.I. Parade would be a matter of trial but at this stage, it is indicative of his involvement and particularly when the victim has identified him.

14 The victim girl is a mentally retarded young girl and as the medical report indicate about her understanding of the situations and circumstances around her as it reveal that the general function of knowledge of the victim girl is poor and she cannot understand simple transaction. Such a mentally retarded girl is the victim of the offence and she has narrated the incident to her sister in law, after confidence was inspired in her. In her statement, she narrated the incident in great detail and has stated that she was subjected to sexual harassment at the hands of many boys and the applicant being one of them is identified by her in the T.I. Parade. The applicant is arraigned as an accused in a heinous offence where the mental incapacity of the victim girl has been taken advantage of by the accused persons. The punishment prescribed for the offence punishable under Section 376D, is RI for a term which shall not be less than 20 years but which may extend to life.

 Considering the seriousness and gravity of the offence with which the applicant is charged, I do not deem it expedient to release him on bail, on two grounds, that there is an apprehension expressed on part of the prosecution that he will flee from the course of justice; and that he will tamper with the prosecution evidence.

15 Application do not therefore warrant any consideration and is rejected.

16 Needless to say that the observations made are relied on decision of the present application and the Special Court will not be influenced by the said observation during the course of trial.

SMT. BHARATI DANGRE, J