

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
BAIL APPLICATION NO. 1673 OF 2021

Chavda Bhavnaben Khimjibhai

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. S.G. Ladda, Advocate holding for Mr. R.N. Jain, Advocate for the applicant.

Mr. V.S. Badakh, APP for respondent/State.

**CORAM : M.G. Sewlikar, J.**

**DATE : 12<sup>th</sup> January, 2022.**

PER COURT :

1. This application is filed by the applicant for her enlargement on bail in connection with Crime No. 0879/2021 registered with M.I.D.C. Waluj Poilce Station, Dist. Aurangabad, for the offences punishable under Sections 376(2)(j)(n), 201, 370, 372, 373, 313, 465, 504, 506, 323 read with Section 34 of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. Facts in brief are that the informant, aged 18 years, is the daughter of accused Subhash Rathod. She has a step-mother by the name of Priyanka Rathod. Informant wanted to pursue studies but her father was against it. Her parents decided to get her married off.

3. Applicant Bhavna had been to the house of the informant. Informant's father and applicant were discussing about the marriage of the informant. Applicant is the resident of Derdi (Kumbhoj), Tq. & Dist. Rajkot, Dist. Gujrat. Father of the informant sent the informant along with the applicant and requested the applicant to search a suitable groom for the informant. Later on, informant realised that her uncle and father had sold her to the applicant for Rs.2,00,000/-. Informant lived with the applicant for a period of one month. After 2-3 days after reaching the place of the applicant, informant went to sleep at 10.00 pm. She woke up at 10.00 am in the morning. Informant was feeling unwell at that time. She had abdominal pain, pain in the waist and also mild headache. When she told the applicant about her pains and headache, applicant told her that the person she had called in the night had penetrated sexual assault with the informant. In the next night again, an unknown person committed rape on her. That unknown person was also called by the applicant. He also had penetrated sexual assault with the informant. Applicant did not permit the informant to speak with her father on phone. Since the informant was not feeling well, applicant called the father of the informant and sent her back with her father. When she came back to Aurangabad, she started vomiting. She checked herself with the pregnancy kit.

She found that she was pregnant. Her father administered a tablet to her. Thereafter, her father sold her to one Sandip Mali and thereafter to one Vitthal Gaikwad. On these allegations, offence came to be registered against the applicant under the aforesaid sections.

4. I have heard Shri Ladda, learned counsel holding for Shri R.N. Jain, learned counsel for the applicant and Shri Badakh, learned APP for the State.

5. Learned counsel Shri Ladda submitted that applicant runs a NGO. She is an advocate and practising in Sessions Court since 2012. she runs Sayyar Mahila Mandal (Gruh Udyog) at Derdi and Parishram Shikshan Sanstha. He submitted that informant, on the request of her father, was taken by the applicant as she was told by one lady by the name of Daya Kumawat that father of the informant was poor and the applicant should find a good match for the informant.

6. He further submitted that after 4 to 5 days, Subhash (father of the informant) had phoned the applicant. At that time, he was told to bring informant along with Aadhar Card and Birth Certificate. Thereupon, said Subhash, informant and two more

persons came to Gondal. From her external appearance, informant was found to be a minor and therefore, applicant had asked Subhash to bring Birth Certificate of the informant. Subhash requested the applicant to keep the informant in the NGO of the applicant. However, since the applicant was staying alone, she decided to keep the informant with her. Subhash had sent Aadhar Card of the informant on her WhatsApp from which, she realised that informant was less than 18 years of age. Therefore, applicant sent the informant back to Subhash. Shri Ladda submitted that from narration in the First Information Report, it is clear that the applicant had called the father of the informant and sent the informant back. He submitted that if at all the applicant was involved in the crime, she would not have sent back the informant along with her father. He submitted that the incident took place in the year 2018 and First Information Report came to be lodged on 31<sup>st</sup> August, 2021 i.e. after a period of three years. No explanation is forthcoming as to why the First Information Report has been lodged after an inordinate delay of three years. He submitted that the applicant has no criminal antecedents. He further submitted that the conduct of the informant shows that she implicated her father, her step-mother, one Sandip Mali and one Vitthal Gaikwad. He submitted that she made the same allegations against Sandip Mali

and Vitthal Gaikwad. From her conduct, it is clear that applicant has been falsely implicated. He, therefore, sought release of the applicant on bail.

7. Learned APP Shri Badakh supported the order of the learned Additional Sessions Judge.

8. Aadhar Card of the informant is placed on record. It shows that the date of birth of the informant is 15<sup>th</sup> June, 2003, which means on the date of the incident she was 15 years of age. Allegations against the applicant are serious in nature. Narration in the First Information Report shows that applicant is engaged in trafficking of minor girls. Narration in the First Information Report further shows that she was subjected to penetrative sexual assault twice by some unknown persons at the residence of the applicant. She has alleged that some stupefying substance was added in her food. Learned counsel Shri Ladda submitted that in her supplementary statement, the informant had made different allegations. She stated that she was forcefully sent to Gondal in a private vehicle at the residence of the applicant. He submitted that this clearly shows that a false First Information Report has been registered against the applicant. It is true that informant has stated

in her supplementary statement that she was forcefully sent to the residence of the applicant in a private vehicle. However, in supplementary statement also, she has stated that she was subjected to penetrative sexual assault. Merely because there is some addition or subtraction in the details, at this stage, it cannot be concluded that the informant has made false allegations against the applicant.

9. It is pertinent to note that in the statement under Section 164 of the Code of Criminal Procedure, informant made similar allegations against the applicant. Even while recording her medical history, her narration before the Medical Officer shows that she made similar allegations against the applicant. She has stated in the narration before the Medical Officer that she was subjected to penetrative sexual assault and that her father took money in return from the applicant for keeping the informant. This clearly shows that on three occasions i.e. at the time of lodging First Information Report, at the time of giving statement under Section 164 of the Code of Criminal Procedure before the learned Magistrate and at the time of narration before the Medical Officer, the informant stuck to her allegations.

10. So far as delay in lodging First Information Report is

concerned, it cannot be lost sight of that the informant was minor when this incident took place. This explains the delay in lodging the First Information Report.

11. Therefore, at this prima facie stage, it cannot be said that the applicant has been falsely implicated. In this view of the matter, I am not inclined to grant bail to the applicant. Hence the following order :-

**ORDER**

Application is rejected.

**( M. G. SEWLIKAR )**  
**Judge**

dyb