

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1858 OF 2021
ALONGWITH
INTERIM APPLICATION NO.1764 OF 2021
IN
BAIL APPLICATION NO.1858 OF 2021

Mohd. Shakeel Rafeeq Sayeed	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Aniket Vagal, for the Applicant.

Smt.Anamika Malhotra, APP for the State.

Mr.Satheesh K.R. for the Intervenor.

PSI Vijay Mohite, Parksite Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 28th SEPTEMBER, 2022.

P.C.

1] The Applicant came to be arrested in CR No.613/2020, registered with Parksite Police Station which invoke offence under Sections 323, 354, 376, 504, 506 of the Indian Penal code. On 07.01.2021 the Applicant came to be arrested and since then he is incarcerated.

2] Heard learned counsel for the parties.

3] I have perused the charge-sheet which has collated the material leading to the charge of rape against the present Applicant alongwith other sections of IPC.

The complainant who is into social work reported to the Police Station on 25.11.2020, narrating that since 2017 she got acquainted with the present Applicant and they were on friendly terms. After some days, she was also introduced to his mother and wife. She narrated that in March 2018, the Applicant had borrowed a sum of Rs.5 Lakh from her and accordingly by executing an Agreement, the amount was handed over to the mother of the Applicant, but whenever money was demanded back, it is alleged that the Applicant avoided.

4] The incident which has roped the present Applicant is narrated to be of 24.10.2020. It is stated in the complaint that, at around 21.30 p.m. when she was sitting in the compound of her house, the applicant arrived there. The presence of the Applicant in front of her house, was stated to be for demanding Rs.70,000/-, which he had incurred in August, 2020 after she had lodged complaint against him for outraging her modesty at Parksite Police Station, and since the amount was expended by him to secure his release on bail, he wanted it from the complainant.

The complainant also started demanding the amount which was advanced to the Applicant and it is her narration, that he was abusive and started assaulting the complainant. At that time, a woman in the neighbourhood came to her rescue, but it is alleged that the Applicant forcefully dragged her to the office and by pushing her in the bathroom, he committed oral sex and also threatened that the complainant would be falsely implicated in some other offence.

5] About the incident dated 24.10.2020 the complaint came to be lodged on 25.11.2020 and the learned APP has invited my attention to the complaint which was addressed by the complainant to the DCP Zone 6 on 26.10.2020. However, no explanation is given as to why the offence was not registered.

6] During the course of investigation, prosecution collected footage from the CCTV camera fitted outside the offence/house of the complainant and the Pendrive was delivered by the complainant herself. In the said pendrive, the happenings of the particular day from 9:24:14 to 11:48:52 are recorded. The CCTV footage specifically record the presence of the Applicant on the spot and it has recorded that the complainant and Applicant were chitchatting. At 11:48:33, it is seen that the Applicant is leaving the place and the complainant is attempting to stop him, followed by two women and one man who are seen running after the complainant.

7] Based on this narration, a specific question was raised, whether the Applicant is seen following the complainant inside the house/office and the learned APP was asked to peruse the CCTV footage.

Accordingly, the Investigating Officer has filed Affidavit dated 22.09.2022, wherein, he has stated that the CCTV footage has recorded entry of the Applicant in the premises of the complainant at 9.26 p.m. and from 9.26 to 9.32 they are seen chitchatting with each other and the other person who was present, is leaving the premises. However, the CCTV footage from 9.32 p.m. to 11.48 p.m. is not available due to some technical glitch. The investigating agency was not able to retrieve the footage for the said period.

8] In the wake of non-availability of the said footage, the prosecution will have to only reply upon the statement of complainant, as no other supportive material is available. The veracity of the allegations will ultimately be decided during trial.

The submission of Mr. Aniket Vagal, the learned counsel for the Applicant, is to the effect that the complainant and Applicant shared a proximate relationship for some time and only when the Applicant started residing with his wife, a false complaint is lodged. However, without commenting upon merits of the matter, I deem it appropriate that the said aspect shall be left to the trial Court to test the veracity of the version of the complainant as well as defence of the accused.

9] Since the Applicant is incarcerated since 07.01.2021 and more than one and half year has expired since his arrest and as his further incarceration is unnecessary, I deem it fit to release the Applicant on bail.

The learned APP invite my attention to 13 offences registered against the Applicant from 2015 to 2020. The learned Counsel Mr. Vagal states that in most of the offences he has been released on bail and some of the offences are compromised.

Considering the accusation which the Applicant has to face, merely because he has antecedents, I do not think that he should be further detained. However, the release will be subject to condition that he alongwith his entire family shall move out of Ghatkopar and shall reside outside Ghatkopar and except for the purpose of reporting Parksite Police Station for attendance, he shall not enter Ghatkopar.

Hence, the following order :

ORDER

(a) Application is allowed.

(b) Applicant – Mohd. Shakeel Rafeeq Sayeed shall be released on bail in connection with C.R.No.613 of 2020 registered at Parksite Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall mark his attendance, on first Saturday of Trimester, between 4.00 p.m. to 5.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall not enter Ghatkopar area, except for the purpose of marking attendance.

(f) The Applicant shall regularly attend trial, on every date, unless exempted.

(g) Interim Application is also disposed off.

[BHARATI DANGRE, J]