

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1989 OF 2021**

Akash Labhu Vasani .. Applicant

Versus

The State of Maharashtra .. Respondent

...

Mr.Vijayprakash Yadav for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

PSI Jayshree Mulgir, attached to Borivali Railway Police Station, present.

...

CORAM: BHARATI DANGRE, J.

DATED : 15th SEPTEMBER, 2022

P.C:-

1. The applicant is charge-sheeted for the offence punishable under Section 376(D) of the Indian Penal Code , on a complaint filed by the prosecutrix, aged 34 years, on 12/01/2021, regarding an incident dated 26/12/2020, when she had gone to attend the nature's call. The applicant came to be arrested on 16/01/2021.

2. The prosecutrix is a married woman, aged 34 years, having two children and is engaged in the activity of selling

clothes and she alleged in her complaint that on 26/12/2020, when her husband had gone to Surat to purchase clothes, she returned home at Vasai at about 12.00 night and at around 00.30 hrs., went to the railway track to attend the nature's call. It is her narration that the present applicant came there, abruptly and closed her mouth and pulled her behind. It is alleged that he was accompanied with one more person. The applicant removed her apparels and the person accompanying him gagged her and, thereafter, the present applicant committed forcible sexual intercourse with her.

3. The complainant alleged that she did not disclose the incident to any one nor to her husband also, but she was so disturbed and was under so much of stress that she consumed rat poison on 03/01/2021, which required her hospitalization in a private hospital, where she received treatment.

On repeated inquiry by the husband, she disclosed him about the incident and by gathering all her guts with, support of her husband, she reported the incident to the police, which involved the present applicant as an accused.

4. Heard learned counsel for the applicant and the learned A.P.P. and with their able assistance, perused the material compiled in the charge-sheet.

The complainant, in her complaint dated 12/01/2021, refer to the applicant as a person residing in her neighbourhood and she state that while other unknown person gagged her, the applicant committed forcible intercourse with her. On the next day, her husband returned from Surat, but she did not disclose the incident to him, as she was petrified. She state that she continued with her business activity during the said period, but on 03/01/2021, when she went to Vasai for selling clothes and then went to her mother's place, she consumed poison.

Her supplementary statement was recorded on the very next day and she improved her version by stating that she is known to the applicant, as he was offering tuition to her son by visiting her house. She state that since her husband used to keep the mobile phone at home, as it was required for by her children to attend the on-line class, the applicant used to contact her on phone and he expressed his liking for her and even offered her to accompany him on a pleasure drive, which she denied. She state that she disconnected the phone and scolded him for his irresponsible behaviour.

In her supplementary statement, she reiterated that since she was mentally disturbed, while staying at her

mother's house on 03/01/2021, and since she was feeling ashamed about the incident, she consumed poison.

5. During the course of investigation, when she was asked to give the details of the unknown person, so that his sketch could be prepared, she specifically informed the police that she do not recollect his face or any particular feature, from which, he could be recognized.

6. Learned counsel for the applicant has invited my attention to a communication addressed by Waliv Police Station to the Senior Police Inspector, Manikpur dated 13/01/2021, when an MLC was received in respect of one woman, being admitted in Platinum Hospital, Vasai. The information, which was transmitted, was to the effect that she was suffering from headache and when she consumed a medicine to cure the ailment, she felt giddy and realised that in absence of electricity, inadvertently, she consumed a pill meant for killing rodents. She was offered treatment and in her statement, recorded on 03/01/2021, she admitted that she was suffering from headache and as a cure, she took some medicine, which was inadvertently found to be meant for killing rodents.

7. Learned counsel for the applicant also state that the whole story of the prosecutrix is concocted and from the CDR, which is compiled in the charge-sheet, it can be seen that she was constantly in touch with the applicant and in fact, on perusal of the CDR it can be seen that there used to be a long conversation between the two and one conversation dated 06/11/2020 is of 152 minutes, which is a call made by the prosecutrix. Even on 03/01/2021 i.e. the date on which she mistakenly consumed the poison, a call received by the applicant from the prosecutrix, and it lasted 128 minutes.

The CDR clearly reflect that the prosecutrix was in touch with the applicant and most of the calls are made by her and the duration of chat between them reveal the nature of relationship that was shared by them.

8. The case of the prosecutrix, in the wake of the above, appears to be doubtful and ultimately it is for the prosecution to establish that the incident dated 26/12/2020 did occur, without her consent and it amounted to the offence under Section 376D of the IPC.

9. In the wake of the material compiled in the charge-sheet against the applicant, he need not be further incarcerated though he may take the consequences of the accusations

levelled against him during the trial.

10. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations, in any manner.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Akash Labhu Vasani shall be released on bail in connection with C.R.No.10 of 2021 registered with Borivali Railway Police Station, on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station on first Monday of every trimester between 4.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (d) The applicant shall not, in any manner, establish the contact with the prosecutrix.

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

(f) On being released on bail, the applicant shall give his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(SMT. BHARATI DANGRE, J.)