

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1566 OF 2022

1. Bhaiyya @ Rushikesh Duryodhan Kare
2. Rahul Hanumant Kare
3. Pappu Shivaji Kare

...Applicants

Versus

State Of Maharashtra

...Respondent

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Mr. Kuldeep S. Patil i/by Mr. Nagesh Y. Chavan, Advocate for the Applicants.

Mr. N. B. Patil, APP for the Respondent – State.

Mr. Atul Khandare (PSI), Walchand Nagar Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 17th OCTOBER, 2022.

PER COURT:

1. The applicants are arrested on 14.02.2022 in connection with C.R. No.57 of 2022 registered with Walchand Nagar Police Station, Taluka Indapur, Dist. Pune for offences punishable under Sections 376-D, 354-B, 452, 323, 341, 506 & 143 r/w Section 149 of Indian Penal Code (for short “IPC”).

2. The First Information Report (for short ‘FIR’) was registered on 10.02.2022 alleging that the applicants entered into the house of the complainant/victim. They removed her clothes and tried to sexually assault her. They outraged her modesty and left the

house. The FIR further mentions that, while she was approaching the police for lodging complaint, she came across Shivaji Kare, Duryodhan Kare, Hanumant Kare, Maruti Kare, Ajinath Kare who threatened her and told her not to lodge complaint to the police. The medical examination of the applicant was conducted on 11.02.2022. The injury certificate indicate that the complainant was examined on 11.02.2022 at 5.30 p.m. She on her own went to the hospital for medical examination. The certificate refers to contusion over central region of lower back having simple injury with hard and blunt object. She was provided treatment on OPD basis. Thereafter, supplementary statement of the complainant was recorded on 18.02.2022, wherein she has stated that on 10.02.2022, the applicants had sexually assaulted her. Thereafter, Section 376-D of IPC was added. The accused were arrested. On completing investigation, charge-sheet is filed.

3. It is submitted that the FIR has been registered on account of enmity. There is property dispute. Civil Suit is pending between the parties. The version of the complainant in supplementary statement is after thought. The complainant had opposed application for bail preferred by the accused before the Court of learned Magistrate before recording her supplementary statement

and that application it was nowhere stated she was subjected to sexual intercourse. The medical examination report pursuant to registration of offence under Section 376 of IPC is not on record.

4. Learned APP submitted that the supplementary statement of the complainant attributes overt act to the applicant having subjected to sexual intercourse. Statement of son of the complainant was recorded during investigation. Statement of Mahadeo Kare was also recorded on 11.02.2022, who has corroborated the version of the complainant that she was required to stand in front of the house without clothes.

5. It is pertinent to note that the FIR was lodged alleging that the accused has subjected her to act of outraging modesty. Thereafter, the complainant had appeared before the Court of learned Magistrate by filing application opposing bail. It was not alleged that the accused had subjected her to sexual intercourse. She was medically examined on 11.02.2022. She had provided history of alleged assault by fist/hand. There is no allegations of sexual assault. The supplementary statement is recorded on 18.02.2022 after the period of eight days and for the first time it was alleged that all the accused had subjected her to sexual assault. Apparently, the version reflected in the supplementary statement is

after thought. The applicants are in custody from the date of arrest. Charge-sheet is filed. Further detention of the applicants is not necessary. Hence, I pass the following order :

ORDER

- i. Criminal Bail Application No. 1566 of 2022 is allowed;
- ii. The applicants are directed to be released on bail in connection with C.R. No.57 of 2022 registered with Walchand Nagar Police Station, Taluka Indapur, Dist. Pune on executing PR. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii. The applicants are permitted to furnish cash bail in the sum of Rs.25,000/- each for a period of eight weeks in lieu of surety.
- iv. The applicants shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- v. The applicants shall not approach the victim and shall not tamper with the evidence.
- vi. Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)