

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2050 OF 2021**

Ajit Naharsingh Dasana .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.2971 OF 2022
IN
BAIL APPLICATION NO. 2050 OF 2021

Archana Ravi Gupta @ Arshina Bibi .. Applicant
Versus
The State of Maharashtra & Anr .. Respondent

...

Mr. Aabad Ponda, Sr. Advocate with Ashish Raghuvanshi for the applicant.

Ms.Ruchi Pawar for the intervenor.

Mr.S.V.Gavand, APP for the State.

PSI Shri Bharat Rane from Kandivli police station.

CORAM: BHARATI DANGRE, J.

DATED : 14th SEPTEMBER, 2022

P.C:-

1 The complainant has stated in her complaint dated 27/2/2021 that she is aged 22 years and she married

10 years back. From the first marriage, there are two children, aged 8 years and 6 years, but she state that her husband was addicted to liquor and certain other vices which prompted her to separate from him.

As per her version, she became acquainted to another person, and on developing proximity, she married him and started residing with him. Her husband was engaged in the business of catering and on one fine day, i.e. 19/12/2021, she accompanied him on work. While returning back, her husband directed her to accompany the applicant who was riding back on his motorcycle and since there was no space for her in the tempo in which the entire goods and catering material were being transported, she accompanied him.

As per the prosecutrix, after reaching a particular distance, when she was travelling with the applicant on his motorcycle, he took an abrupt turn and by stopping the vehicle near a *nala*, he indulged into forcible sexual intercourse with her. It is alleged that he threatened her not to disclose the incident to anyone. On returning back, when the husband inquired from her about the delay in reaching home, she responded by stating that since they had to fill up the petrol on their way back, they were delayed.

2 On 21/12/2021, her husband again inquired with her since she was keeping quiet and therefore, she disclosed the

incident to him and then reported the same to the concerned police station. on 27/12/2021.

The aforesaid complaint resulted in registration of C.R.No. 122/2021 which invoke Sections 376, 506 II and 323 IPC.

The statement of the victim came to be recorded u/s.164 of Cr.P.C where she reiterated her stand in the complaint. She was subjected to medical examination and on completion of investigation, the charge-sheet came to be filed. During the course of investigation, the applicant came to be arrested on 28/2/2021 and since then, he remain incarcerated.

3 The complainant herself has filed an application for intervention and in paragraph nos.4 and 5, she state as under :-

“4 That on 20.02.2021, Intervenor had gone along with her husband to the work place in the morning, at about 11.30 p.m, after finishing the entire day work, her husband loaded all the things that were required for catering order, in a tempo. He sat in the said Tempo along with the goods with other workers and he told the applicant Ajit Naharsingh Dasana, to leave Intervenor at Keval Baug Hall. That from there after spending some time with each other, Intervenor and Applicant reached Keval Baug bit late. Intervener’s husband inquired as to why they were late, she replied that they had gone to fill petrol.

5. That thereafter, Intervener to save her marriage stopped meeting Ajit Dasana. That after some days, when Intervener’s husband returned home, he started inquiring

about her and applicant Ajit Dasana, as he was told by someone that she and Ajit Dasana were having affair, and that they were seen on number of occasion. That due to this, she got very scared, and with sole intention to save her marriage, she lied that applicant Ajit Naharsingh Dasana and she had no extra marital affair, and that on 20.02.2021, they reached late, as he raped her, and that prior to that she had not gone with him anywhere. As her husband believed her, he took her to police station on 27.02.2021, and she had registered complaint against applicant Ajit Naharsing Dasana, i.e. C.R.No.122 of 2021 at Kandivali police station under Section 376, 506(ii), 323 of IPC”.

4 From reading of the application, it is apparent that according to the complainant, in order to save the marriage, she lied to her husband and to the police officials and made accusations against the applicant.

From the perusal of the material in the charge-sheet and the same being scanned along with the application for intervention by the prosecutrix, it can be seen that the applicant is major and capable of understanding the consequences of her act. Though she has given her age to be 22 years, it do not appear to be correct as she was married 10 years back. In any case, being married on two occasions, she is capable of understanding the consequences of indulging physically with any person and from the narration of the applicant where she has specifically stated that the applicant committed sexual intercourse with her in the

standing position on two occasions within the shortest possible time that was available, in any case, her story would not inspire confidence.

The prosecutrix is not supported by medical evidence, since she is a married woman and had borne two children.

5 In any case, since now the prosecutrix herself has intervened and made a disclosure that the relationship was consensual, but to save her marriage, she lodged the false complaint, I see no reason why the applicant should remain incarcerated.

Ultimately, his fate would be decided at the time of trial when she would step into the witness box and the success of prosecution case would depend upon her testimony.

6 In the light of the specific statement made in paragraph no.4 and 5 of the application by the prosecutrix, the applicant deserve his release on bail. Hence, the following order :-

ORDER

- (a) The Applicant – Ajit Naharsingh Dasana in connection with C.R.No.122/2021 registered with Kandivli Police Station shall be released on bail on furnishing P.R. bond to the extent of

Rs.25,000/- with one or two sureties of the like amount.

- (b) 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. The Applicant should not tamper with evidence.
- (c) The Applicant shall attend the trial on regular basis.
- (d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

Bail Application is allowed in the aforestated terms.

In view of the disposal of Bail Application, Interim Application do not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)