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CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2226 OF 2021

Mr. Ashok M. Saraogi for Applicant.

Mr. M.G. Patil, APP for State.

CORAM: SARANG V. KOTWAL, J.

DATE : 6th JANUARY, 2022
[THROUGH VIDEO CONFERENCING]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.104 of 2021 registered at Thane Railway police station, under Sections 376, 406 of the Indian Penal Code. The Applicant was arrested on 22.02.2021 and since then he is in custody. The investigation is over and the charge-sheet is filed.
2. Heard Shri. A.M. Saraogi, learned counsel for the applicant and Shri. M.G. Patil, learned APP for the State.
3. The FIR is lodged by the prosecutrix itself. She was 18 years 10

months old at the time of filing of FIR i.e. on 11.02.2021. She has stated that she was knowing the applicant from the childhood when they were studying in school at Mumbai. They developed relationship. After some time, the applicant went to Gorakhpur, but they kept in touch with each other. On 22.01.2021 the applicant again came back to Mumbai. It is the case of prosecution that the applicant told her that he wanted to marry her. They decided to elope together. On 10.02.2021 they decided to go to Gorakhpur. They met at Kurla Terminus. The prosecutrix had brought Rs.2 Lacs from her house. They sat in the train going to Gorakhpur. The applicant removed her sim-card from her mobile so that nobody could trace her. The prosecutrix gave Rs.2 Lacs to the applicant. At about 7.00 a.m. the train reached Thane Railway station. The prosecutrix went to the toilet. That time the applicant followed her. It is her specific case that the applicant committed forcible sexual intercourse against her wish in the toilet itself. After this act, the applicant went back to his seat. The prosecutrix stood at the door. At about 10.40 a.m., the ticket checker asked for her ticket. She did not have any ticket, and therefore, she was asked to get down from the train. She got down from the train at Manmad railway station. She did not have money as it was already taken by the applicant. Thereafter, the

informant with the help of police called her mother who came to Manmad railway station and took her back. On this basis, the FIR was lodged.

4. Learned counsel Shri. Saraogi submitted that it cannot be a case of offence punishable u/s.376 of the IPC. From the narration in the FIR itself it shows that it was a consensual relationship between the applicant and the informant. It was at the highest a case of misappropriation of amount of the applicant.

5. Learned APP opposed the application and submitted that it was not a consensual relationship. The FIR and the statement of ticket checker infact supports the informant's case.

6. I have considered these submissions. First of all, the FIR itself mentions that the applicant has established physical relations with the informant against her wish. The applicant, by using force, committed rape on her, therefore, it was not a consensual act.

7. The subsequent conduct of the applicant shows that his intentions were not honest. It was quite obvious that when the ticket checker was asking the informant to get down, the applicant did not help her at all. He had sufficient money given by the informant herself. On the contrary, he went to Gorakhpur alone. This is supported by the statement of the ticket

checker. He has stated that he had seen the informant standing near door of the bogie. She did not have any ticket. Therefore, he asked the informant to pay fine of Rs.770/-, but she did not have money. She told him that she was with passenger on seat No.21. Thereafter this witness went to seat no.21. The applicant was sitting there and he had his ticket. The ticket checker asked him to pay the amount of Rs.770/-, but the applicant flatly refused to pay the said amount. Therefore, the informant was asked to get down at Manmad railway station.

8. All this shows that the applicant has committed serious offences. No case is made out for bail. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)