

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

BAIL APPLICATION NO.2434 OF 2021

Mohammed Zubair Shafi Bagwan ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Kalam Shaikh for the Applicant.
Mr. P.H.Gaikwad-Patil, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 6th JUNE, 2022.

P.C. :

Heard learned counsel for the applicant and
learned Additional Public Prosecutor for the State.

2 Applicant seeks his enlargement on bail in
connection with the Crime No.10 of 2021 dated 14th
January, 2021 registered with Manmad Railway Police
Station, Nashik for the offences punishable under Sections
366, 376, 341, 323, 504 and 506 of the Indian Penal Code,

1860. Complainant is 29 years old married lady. Her case is that on 13th January, 2021, she left her matrimonial home due to recurring quarrels with her husband and went to Manmad Railway Station to reach his brother's house, who was residing in District: Beed. She would allege that applicant met her on railway platform and promised to reach her to her brother's place in Beed. Both travelled in train from Manmad to Bhusaval. She would allege that they alighted from the train at Bhusawal, in the late night. Therefore, applicant allegedly persuaded her to accompany him in his house in Bhusaval. She would further allege that taking disadvantage of the situation, applicant sexually assaulted her. However, she could manage to escape from the applicant's house with his mobile. She reported the incident to the police. Whereafter, police called the applicant and arrested him on 14th January, 2021. Investigation in the case is over and the charge-sheet has been filed.

3 Learned counsel for the applicant has taken me through the charge-sheet and in particular, the complaint, statement of complainant recorded under Section 164 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) and extract of the CC TV Footage. Statement under Section 164 of the Cr.P.C. on the material point contradicts the First Information report. In the sense, in the statement recorded under Section 164 of the Cr.P.C. she disclosed, she had left her matrimonial house of Manmad eight months before the incident; whereas First Information Report says incident had occurred soon after she left her matrimonial house. The statement under Section 164 of the Cr.P.C. conveys that she is well educated lady, holding the degree and completed the course of the Nursing Assistant. The CC TV Footage, reveals, that she was in the company of the applicant on 14th January, 2021 at 2 a.m. on Bhusawal Railway Platform. Therefore, her narration in statement recorded under Section 164 of the Cr.P.C., contradicts, her report to police.

Having regard to facts of the case, it is inconceivable, that lady holding the degree of Science faculty would not know, how to travel to his brother's house in Beed and would require help of the third person. Thus, taking into consideration overall circumstances, in my view, complainant's statement under Section 164 of the Cr.P.C., prima-facie, renders prosecution case uncertain. Thus, case is made out for granting bail. Even otherwise, applicant is permanent resident of Bhusaval city and his presence for the trial can be secured by imposing suitable conditions. For all these reasons, application is allowed. Hence, following order;

ORDER

- (i) The applicant in Crime No.10 of 2021 registered with Manmad Railway Police Station, District: Nashik, shall be released on executing PR bond for the sum of Rs.25,000/- with one or more sureties in like sum.
- (ii) The applicant shall report to the Manmad Railway Station once in a month, i.e., 2nd Monday of every month

between 11 a.m. to 1 noon till the charge is framed.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case

4 The application is accordingly allowed and disposed of.

5 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)