

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1553 of 2020**

Armugam Raja Jyotimani .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Samir Vaidya for the applicant.

Mrs. Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 6th JULY, 2022

P.C:-

1 The applicant is charged with offences punishable under Section 376D, 452, 397, 301 r/w Section 66 of the Information Technology Act, in CR. 41/2014 registered at Aarey Police Station, Goregaon (East), Mumbai.

 The applicant is working as an employee in the Film City and state that he is into the activity of construction and dismantling of film/television sets for various production house.

2 He came to be arraigned as an accused on a complaint filed on 26/4/2014 by the complainant, aged 20 years wherein she allege that she was residing in a chawl along with her family and she was well acquainted with her land owner and his family.

She state that he had three children and the name of the elder son is Navelpandi. She state that he was unemployed and is usually in habit of loitering outside the house. He had developed proximity with the complainant's husband.

3 On the date of the incident, after her husband returned home from work at 9.15 pm and she was finishing her household work. Her husband consumed liquor and she served him food. While she was having food, the son of her owner, Velapandi called her and told her that she should fill water from the tap. While she was about to leave the house, it is alleged that he entered the house and by brandishing a knife, took her in one corner. Her husband, who suddenly work up, requested him that she should not indulge in such an act but he convinced him that if the complainant make the customers happy, she will earn money and he would share the money with him. She was thereafter taken to another room and made to consume liquor.

The complainant specifically state that two persons were accompanying Pandi and they were known to her by face. Thereafter, Pandi assured her that she would earn Rs.10,000/-. It is alleged that Pandi thereafter told her that he had given Rs.30 lakhs to her husband, out of which he should be handed over Rs.10 lakhs and if she does so, he will not harm her. The house was searched, but nothing was found. Thereafter, two persons accompanying Pandi took her husband out of the house and after some time, entered the house. Her husband did not return and

when she inquired about him, she was asked to remove her clothes. She was threatened that if she did not act as per the directions, her husband would be killed. Under fear, she removed the clothes and it is alleged that Pandi had sexual intercourse with her and thereafter, the other two took their turns. Early in the morning, Pandi came to her room once again and told her that he has got customers who are sitting in the next room. Her husband was also present. She narrated the incident to her brother and uncle who returned home. She was taken to Trauma Hospital, Jogeshwari.

On the very same day, she got her supplementary statement recorded, where she clarify that when she opened the door of the house, Pandi and his brother who was residing at his native place, and his nephew entered the house and by brandishing the knife and threatening that her husband would be harmed, the accused persons forced themselves upon her by taking turns. In the supplementary statement, she give further details of the act and she specifically state that in the hospital, she had stated that six persons had committed rape upon her, but she clarify that the owner's son Pandi and his relatives who came from Madras i.e. 3 to 4 people committed forcible sexual intercourse with her. Her statement was again recorded on 4/5/2014 and 6/5/2014, where she consistently refer to the forcible intercourse by 3 to 4 persons.

4 On the complaint being filed, the Investigating Machinery was set into motion and during the course of investigation, the statement of several witnesses came to be recorded. The statement of the brother of the complainant is also recorded, who state that the complainant was petrified and told him that Pandi and his two friends had destroyed her. Since he realized that forcible intercourse was committed upon her, he took her to the hospital.

 The statement of the daughter of the land owner is also compiled in the charge-sheet. In her statement, she specifically state that on 25/4/2014, her cousin's son Jayraj and his cousin brother Maharaja had come to stay with them since 3 to 4 days, as a result which Velpandi did not go to the film city for attending his duty. The whole day he was at home and he was roaming with his friend Armugam Raja Jyotimani (applicant), resident of Unit-7 Jairaj and Maharaja. She narrate that at 8.30 p.m, after consuming liquor, they went to sleep in the room next to the room of the complainant. At around 10.30 p.m, Velpandi directed her to bring some snacks and when she went to the room, she noticed her brother, Jayraj, Maharaja, his friend Armugam and Kamruddin, husband of the complainant consuming liquor. She is not aware of the actual incident, but saw her brother and the present applicant consuming liquor with the husband of the complainant.

Statement of one Santosh Sahu is also compiled in the charge-sheet, who state that he runs a Kiosk/Chinese counter and Pandi along with his friend visited his hotel and ordered food. He specifically state that he was accompanied with the present applicant and Maharaja and two unknown persons. Pandi disclosed to Santosh that the person accompanying him are his cousin and they have come from village and that is why he is consuming food in the hotel, instead of carrying it home. In the evening at around 8.30, Pandi accompanied with his friends, collected the parcel of Chinese rice and soup.

On similar lines, is the statement of one Devidas Dhargave, a cook working with Santosh Sahu.

5 On completion of investigation, charge-sheet was filed against all accused persons on 30/7/2014, excluding the applicant. The applicant came to be arrested on 9/10/2019 and remanded to Police Custody and thereafter to judicial custody. Since the charge was filed against him on expiry of 90 days, he sought default bail, but it was rejected by the Court on 18/1/2020.

6 The statement of the prosecutrix came to be recorded u/s.164 of the Cr.P.C and she has reiterated the incident narrated in the complaint and referred to three persons who had forcibly committed sexual intercourse with her. She refer to Pandi and two other persons whose description, she has specifically given.

On arrest of the applicant, he was subjected to Test Identification Parade and the complainant/prosecutrix has identified him.

7 In the wake of the aforesaid circumstances, since the applicant is charged for a heinous offence of gang rape and prosecutrix has consistently stated that Pandi along with two unknown persons have committed forcible intercourse with her and she has identified the applicant as one of the two unknown persons, he do not deserve his liberty.

 Considering the gravity of the accusations faced by him, the application is rejected.

(SMT. BHARATI DANGRE, J.)