

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3238 OF 2021**

Rohan Ravindra Bhagat and Anr. ... Applicants
versus
The State of Maharashtra ... Respondent

Mr. Ashok Mundargi, Senior Advocate with Mr. Kuldeep Nikam, Mr. Prasad Avhad i/
by Mr. Kuldeep Nikam, for Applicants.
Mr. A.A.Palkar, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 11th JULY, 2022

P.C.

1. This is an Application for bail under Section 439 of the Code of Criminal Procedure, 1973. The Applicants are arraigned for the offences punishable under Section 376D, 323, 506(2) of the Indian Penal Code, 1860, for having committed gang rape and caused hurt and also criminal intimidation.

2. The indictment against the Applicants runs as under :

(i) 'X' the victim, a 18 years old girl, is a friend of another 16 years old girl 'Y'. On 6th May, 2021 at about 9.00 p.m., they were strolling at Kharghar near arches. 'X' had known the Applicant No.1. The Applicant No.2 is the cousin of Applicant No.1. The Applicant No.2 is a friend of 'Y'. Initially Applicant Nos.1 and 2 had met them. However, after a brief conversation, the girls and the Applicants parted ways. While the girls were on their way to home, they noticed father of 'Y' searching for 'Y'.

The girls concealed their presence. 'Y's father left the said place. As it was 11.30 p.m., they decided not to return home and stay at the Applicants' house overnight. The girls called the Applicant No.2. Both the Applicants came in a Wagon R car. The Applicants took them to the terrace of a four storied building on the pretext of spending some time under the sky.

(ii) The Applicant No.2 demanded sexual favour from 'X'. When she refused, the Applicant No.2 abused her. Thereafter, Applicant No.1 took her to another part of the terrace. He made 'X' to sit on the chair. The Applicant No.1 partially undressed himself and 'X' and had forcible intercourse with her without her consent and despite resistance, by gagging her mouth. 'X' disclosed the incident to 'Y'. However, 'Y' was not ready to leave the said place. After some time, the Applicant No.2 took 'X' to another part of the terrace and had forcible oral sex. The Applicant No.1 again returned and demanded sexual favour. When 'X' refused, the Applicant No.2 threatened to disclose the said incident to all the persons whom 'X' had known. Thereupon, the Applicant No.1 again had forcible physical relations with 'X'.

(iii) After about two days, 'X' and 'Y' returned to the house of 'Y' and, thereafter, reported the incident to the police. The Applicants were apprehended. Post completion of investigation, charge sheet has been lodged.

3. Mr. Mundargi, the learned Senior Advocate for the Applicants

submitted that the statements of 'X' and 'Y', prima facie, indicate that the entire episode was consensual. He laid emphasis on the fact that the girls were admittedly moving in Kharghar at about 9.00 p.m. They called the Applicant No.2 at about 11.30 pm. and requested him to make arrangements for their overnight stay. Even after the alleged incidents, the girls neither returned to their home immediately nor lodged the report. They remained out of their respective homes for almost two days and, thereafter, lodged the report on 8th May, 2021.

4. Mr. Mundargi, learned Senior Advocate, invited the attention of the Court to the statement of 'Y' and Hiresh Laxman Rathod, a friend of the Applicants, who stated that on the night of occurrence at about 10.00 p.m., the Applicant No.1 had asked him to bring a packet of condom and a water bottle. This, according to Mr. Mundargi, would indicate that till the girls called the Applicants, there was no act or conduct on the part of the Applicants which would give an impression that the Applicants intended to sexually exploit 'X' without her consent.

7. I have carefully perused the allegations in the FIR and the documents annexed with the report under Section 173 of the Code. I find it rather difficult to agree with the submissions of Mr. Mundargi that, at this stage, an inference can be drawn that the entire episode was consensual. 'X' has categorically asserted that the Applicant No.1 had forcible physical relations with her twice. The Applicant No.2 had forcible oral sex. The fact that the girls had called the Applicants at about 11.30 p.m.,

purportedly for staying overnight at the house of the Applicants, since the girls had known the Applicants from before, cannot be exalted to such a pedestal as to infer consent for the alleged sexual act. It is pertinent to note that 'X' has categorically stated that initially it was the Applicant No.2 who demanded sexual favour and, thereafter, the Applicant No.1 had forcible physical relations. This incident was followed by a forcible sexual act by the Applicant No.2 without her consent. What exacerbates the situation is the fact that the Applicant No.2 threatened to bring infamy to 'X' when she refused to surrender to the lust of the Applicant No.1 on the second occasion, and thereby forced her to subject herself to the exploitation by the Applicant No.1, on the second occasion.

8. Prima facie, the requisite elements for the offence punishable under Section 376D are made out. I am, therefore, not inclined to exercise the discretion in favour of the Applicants.

9. At this stage, Mr. Mundargi, submitted that having regard to the age of the Applicants who are 19 year old boys, the trial may be expedited. From the record, it appears, the victim 'X' was just above 18 years of age at the time of the alleged occurrence. Whereas, 'Y' was 16 years old.

10. Having regard to the age of the Applicants and the victim as well, it may be expedient that the trial is commenced and concluded expeditiously. However, I refrain from stipulating any time for completion of trial. Hence, the following order :

ORDER

- (i) The Application stands rejected.
- (ii) The learned Sessions Judge who is seized of the case arising out of C.R.No.167 of 2021 registered with Kharghar Police Station, is requested to commence and conclude the trial in the said case as expeditiously as possible.

(N.J.JAMADAR,J.)