

rajshree

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

BAIL APPLICATION NO.4018 OF 2021

Mohd. Rehan Mohd. Akbal Shah @ Monu] .. Applicant

vs.

State of Maharashtra] .. Respondent

ALONGWITH

BAIL APPLICATION NO.1362 OF 2022

Dabir Bashir Shaikh] .. Applicant

vs.

State of Maharashtra] .. Respondent

ALONGWITH

BAIL APPLICATION NO.3387 OF 2021

Mohd. Rakib Alauddin Shaikh] .. Applicant

vs.

State of Maharashtra] .. Respondent

Ms.Afreen Shaikh for the Applicant in BA No.4018/2021.

Ms.Anjali Patil for the Applicant in BA No.1362/2022.

Mr.Sudip Mallik a/w Raeesuddin Khan for the Applicant in BA No.3387/2021.

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

PSI Dilip Sawant, Bandra Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 16th NOVEMBER, 2022.

P.C.

1] Three Applicants are facing charge under Sections 376, 376(d), 354 read with 34 of the Indian Penal Code in CR No.291/2021 registered with Bandra Police Station on 12.05.2021. All the three Applicants came to be arrested on 12.05.2021 and are incarcerated as under-trial prisoners.

There have three distinct Applications seeking their release on bail on the common ground that the case of the prosecution is extremely doubtful and it is a clear case of false implication. The contradictory material compiled in the charge-sheet is projected as foremost ground for their release as it is argued that the prosecutrix has changed her version on every occasion.

2] It is further submitted on behalf of the Applicants that they are of young age and their detention is highly prejudicial to their interest and since the prosecution has cited 18 witnesses, trial would somewhat require a considerable time. It is submitted that the accusation levelled on being investigated, the prosecution has collated the material in the charge-sheet and on account of insufficiency of the material, they deserve their release on bail considering their young age and it is also submitted that there are no criminal antecedents to their credit.

3] The charge-sheet filed against the accused persons allege that, on 11.05.2021 all the three accused forced themselves upon the prosecutrix and committed sexual intercourse with her, without her wishes and against her consent and thus they are liable for committing offence punishable under Sections 376, 376(d), 354 read with 34 of the Indian Penal Code.

4] With the able assistance of the respective counsel for the

Applicants and the learned APP, I have perused the charge-sheet.

The prosecutrix, a girl aged 20 years, recorded her statement on 12.05.2021 stating that she is acquainted to accused No.1 Rehan, aged 19 years. She narrated that, on 11.05.2021 at around 21.00 hours, her friend Rakib persuaded her to accompany him for purchasing clothes for Id, as he got his salary. When she met Rakib, he was accompanied by two of his friends Monu (Accused No.2) and Dabir (Accused No.3). She was introduced to them and thereafter they went to Shivaji Nagar market on two motorcycles, she being traveling pillion rider with Rakib.

When they went to market, the shops were closed and therefore the accused persons decided to visit bandstand for a stroll and they reached there at 22.00 hours. They started chatting on the spot. At that time, Accused No.2 Monu took her to a secluded place near tetra pods and attempted to be close to her. She objected to his behaviour, but he was persistent. Thereafter, it is alleged that Monu forcibly removed her clothes and establish physical relations with her, when she told him that she was having pain in her stomach, he did not pay any heed to her request and continued to physically indulging with her.

Thereafter, it is alleged that accused No.3 Dabir, also came to the spot and on noticing that Monu was physical with her, he also started physical indulgence with her. Though she shouted, her friend Rakib did not restrain them. She did not narrate the incident to anyone as she was scared. Rakib, thereafter, reached her to her house by rickshaw. She narrated the incident to her sister who consoled her and she approached the Police Station to lodge report against Monu and Dabir.

5] In her supplementary statement, she gave description of the

three persons and she state that all the three accused persons including her friend Rakib attempted to develop proximity with her and Monu and Dabir committed forcible sexual intercourse with her and she, therefore, lodged the complaint against all the three accused persons.

6] The statement of the victim girl is recorded under Section 164 of the Cr.P.C. on 27.07.2021, where, she gave distinct version when she state that prior to three months while she was returning home, she met Rakib who informed her that she was called at Shivaji Market by his sisters, as they wanted to purchase clothes for Id and therefore she made her mother talk to Rakib. She accompanied Rakib to Shivaji Market, but his sisters were not there. The area was surrounded by police and they were not allowed to enter the market. He, therefore, told her that they would go at some other place and she accompanied him on his bike. After leaving Shivaji Nagar, he offered her a cold drink and took her to bandstand at Bandra. When they reached there, it was dark. At the said place two friends of Rakib, i.e. Dabir and Monu were present. When she enquired about them, Rakib disclosed that they were his friends. They started forcing themselves upon her. She was feeling dizzy after drinking the cold drink and her head was pinning. She enquired whether her drink was spiked and she was informed that three tablets which would make her high, were put in the cold drink. When she questioned Rakib about the incident, he stopped her by saying that she should not accuse his friends. Thereafter, she state that Rakib slapped her and asked her to demand money from the two. She asked the reason and since she did not demand the money, he hit her and by rickshaw left her at house in Rafik Nagar. Though she was unconscious, she noticed that he was screaming and telling everyone

that she was raped. Her parents arrived there and thereafter she lodged the complaint.

7] The discrepancy in the statement of the prosecutrix recorded under Section 161 of the Cr.P.C. and one recorded before the Magistrate under Section 164 of othe Cr.P.C. is apparent.

In her statement before the Magistrate she did not specifically state about physical indulgence except mentioning that they started forcing themselves upon her and even accused Rakib also did that.

8] The prosecutrix was subjected to medico legal examination, which do not reflect any signs of injury in column No.18. The medical opinion is recorded on the basis of history, that sexual assault cannot be ruled out. The history narrated to the Medical officer allege that the accused persons forcibly took her to an isolated beach and committed sexual intercourse, but when the prosecutrix threatened to complain to the police, the two accused persons assaulted her.

9] In the wake of discrepancy in the version of the prosecutrix, the truth will have to be ascertained during the course of trial. The Applicants are young boys and on completion of investigation and entire material being compiled in the charge-sheet, they cannot be further incarcerated and they shall face the trial for the accusations. The applicants deserve their release on bail in view of the material compiled in the charge-sheet, which prima-facie do not establish case of the prosecution.

10] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and

the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

ORDER

- (a) Application is allowed.
- (b) Applicants – Mohd. Rehan Mohd. Akbal Shah @ Monu, Dabir Bashir Shaikh and Mohd. Rakib Alauddin Shaikh shall be released on bail in connection with C.R.No.291 of 2021 registered at Bandra Police Station on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

The Applicants shall be released on cash bail of Rs.50,000/- for a period of four weeks in lieu of sureties. During the said period the applicants shall arrange for the sureties.

- (c) The Applicants shall remove themselves from the area where the prosecutrix is residing and shall not make any attempt to establish contact with her or her family through any mode and an attempt thereof on being reported by the prosecutrix to the Police Station, will result in cancellation of bail granted in their favour.

- (d) The Applicants shall regularly attend trial, on every date, unless exempted.

- (e) Upon release, the Applicants shall furnish their contact numbers and permanent residential addresses to the Investigating Officer and shall keep him updated in case of change in the same.

[BHARATI DANGRE, J]