

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

CRIMINAL BAIL APPLICATION NO. 3480 OF 2021

Amit Yashwant Advalkar & Anr. ..Applicants
Vs.
The State of Maharashtra & Anr. ..Respondents

**WITH
CRIMINAL BAIL APPLICATION NO. 3275 OF 2021**

Sumit Amit Sawant ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr. A. S. Khandeparkar a/w. Mr. Rushikesh G. Bhagat a/w. Mr. Rohit P. Mahadik, for the Applicants.
Mr. A. R. Kapadnis, APP for the Respondent / State.
Mr. Ujwal R. Agandsurve, for the Respondent No.2

**CORAM : C.V. BHADANG, J.
DATE : 2 MARCH 2022**

P.C.

. Both these Applications for bail, arise out of Crime No.111/2021 of Police Station Malvan, District Sindhudurg, under Section 376, 376(D), 354, 354(A), 354(D) and 506 of IPC and Section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The Applicants are the original Accused Nos.1 to 3. The aforesaid crime is registered on the basis of the complaint dated 22 June 2021 lodged by the victim girl, who at the

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relevant time was about 17 years and 10 months of age. According to her, somewhere in the last week of May 2020, the Applicant Sumit Sawant (Accused No.2) had called her in a lane behind the Girls High School. The victim had gone there at about 9.20 p.m. and found that there was a white colour car standing there and the Applicants were the occupants in the said car. She claims that Applicant Sumit asked her to sit in the car and on her refusal forcibly made her to sit on the rear seat. She has thereafter narrated that the Applicants had sexually molested her in the car itself, after which she was threatened. The record discloses that according to the informant, on 19 June 2021, she was again threatened not to disclose the incident else at the risk of a video of the earlier incident being made viral. It is in these circumstances, that the complaint came to be lodged on 22 June 2021. In this case, after investigation, a chargesheet is filed.

3. The learned Sessions Judge has refused to release the Applicants on bail, inter alia for the reason that the offence is serious with allegations of gang rape and secondly on account of the criminal antecedents, in as much as Crime No.22/2021 is registered against the Applicants and the Applicant No.2 is also facing prosecution in Crime No.19/2018.

4. I have heard the learned counsel for the Applicants and the learned APP assisted by the learned counsel for the Complainant. Perused record.

5. It is submitted by the learned counsel for the Applicants that the Applicants have been falsely implicated on account of business rivalry. It is submitted that the Applicants and Satish Acharekar and Rohan Acharekar were in the business of water sports and Scuba diving at Malvan beach since 2 to 3 years, prior to the filing of the FIR. One Mr. Ajay Bidwalkar was working with them. Ajay Bidwalkar was having a love affair with the victim which was opposed by her family. According to the Applicants, the Applicants and the Acharekar brothers had helped Ajay Bidwalkar in getting married with the victim on 15 June 2020. Some disputes arose in the business of the Applicants with the Acharekar brothers in July 2020 on account of which the Applicants have now been falsely implicated with the help of Ajay Bidwalkar and the victim who is his wife. It is submitted that the FIR is grossly belated. The investigation is complete and the chargesheet is filed.

6. Learned APP has submitted that the victim was a 'child', within the meaning of Section 2(d) of the POCSO Act . She has been gang raped by the Applicants in the car. It is submitted that looking to the nature of the offence and the threat held out by the Applicants, there is nothing unusual in the Complainant not lodging the complaint immediately after the incident. It is submitted that after she was again threatened on 19 June 2021, FIR came to be lodged on 22 June 2021. He therefore submitted that the Applicants are not entitled to bail as they are likely to misuse the liberty.

7. I have considered the circumstances and the submissions made.

8. It appears that the victim was on the verge of attaining majority being 17 years and 10 months of age, on the date of the incident which is alleged to have happened somewhere in the last week of May 2020. A bare perusal of the FIR shows that the victim herself had gone to meet Sumit Sawant at about 9.20 p.m. in a lane near the Girls High School, after which she claims that she was taken in the car and was gang raped by the Applicants. However, the FIR of said incident was lodged on 22 June 2021. *Prima facie*, there is no plausible explanation forthcoming, as to why the FIR was not lodged for more than 1 year. In the meantime, the victim was married with Ajay Bidwalkar on 15 June 2020 which fact the learned counsel for the Applicants claims to have been suppressed in the FIR.

9. Learned APP submitted that the victim has disputed the said marriage.

10. However, a perusal of the chargesheet and the statement of the mother of the victim shows that there was a ceremony of marriage gone into although according to the mother, the victim was forcibly got married with Ajay Bidwalkar. There is a statement of one William Pareira which also shows that there was a ceremony of marriage gone into

between the victim and Ajay Bidwalkar, which aspect has not been disclosed in the FIR.

11. The learned counsel for the Applicants submitted that the victim was married with Ajay Bidwalkar on 15 June 2020 and her medical examination was conducted on 23 June 2020 which would not be decisive even as otherwise the same is conducted after more than one year of the alleged incident. There is no recovery of any incriminating article from the Applicants evidently on account of the delay in lodging of the FIR. The investigation is complete and the chargesheet is filed.

12. In so far as criminal antecedents are concerned, the learned counsel for the parties did not dispute that those criminal antecedents are against Satish Acharekar and not against the Applicants. If that be so, I do not find any justification to detain the Applicants behind bar.

13. In the result, the following order is passed.

ORDER

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant No.1 Amit Yashwant Advalkar and Applicant No.2 Gaurav Surendra Prabhu (BA No.3480/2021) and Applicant Sumit Amit Sawant (BA No.3275/2021), be released on bail in Crime No.111/2021 of Police Station Malvan, District Sindhudurg, on executing a P.R.

Bond in the sum of Rs.25,000/- each with one or two solvent sureties each, in the like amount.

(iii) The Applicants shall undertake to remain present before the learned Special Court during the course of trial, unless exempted.

(iv) The Applicants shall not directly or indirectly make any attempt to contact, threaten or influence the victim or any other prosecution witnesses and shall not otherwise tamper with the prosecution evidence.

(v) The Applicants shall report to the concerned Police Station once in a month i.e. on first Monday of every month, till victim is examined before the Special Court.

C.V. BHADANG, J.