

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

**BAIL APPLICATION NO.1265 OF 2022**

Kumar Dhaku Rathod

...Applicant

vs.

State of Maharashtra

...Respondent

Ms. Anjali Patil with M. Sharma for the Applicant.

Mr. S. R. Agarkar APP for the Respondent-State.

**CORAM : S. M. MODAK, J.**

**DATED : 14TH JULY 2023**

**P. C. :**

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The officer from Narpoli police station is present.
3. On the complaint of victim, the Narpoli police station have registered an offence under Sections 376D, 324, 323, 341 of IPC and under Section 37(1) of the Maharashtra Police Act on 2nd August 2020. On 31st July 2020, at about 10.30 pm, the victim was ravished by five persons. She was also assaulted with help of sharp edged weapon and stick. From communication amongst those persons, she came to know about their names as Akash, Arun, Monty

and Vishal. She did not remember their full name. Her supplementary statement is recorded on 6th August 2020, wherein she has taken name of the Applicant as Karan. Whereas she has exonerated Akash.

4. The Court of Additional Sessions Judge has granted bail to co-accused Anil Dnyanu Loney. Its copy is placed on record, whereas bail is denied to this Applicant. Though, the present Applicant is not identified in the parade, on the basis of eye witness's statement by name, Kiran and Shiva, the Applicant was denied bail. Because they have taken the name of this applicant.

5. Learned APP brought to my notice those statements, on page 118 of Karan Lahange and on page 120 is statement of Shiva Modanval. It is true that though they have not taken name of victim categorically, they have disclosed first name as Kumar as a person who has ravished the victim. He also invited my attention to the medical certificate in respect of injuries received by her on account of assault. It is on page 60, inasmuch as there are 11 injuries.

6. As against this learned Advocate Ms.Patil submitted that the medical certificate on the point of sexual intercourse does not

support the case of the prosecution, if she is ravished by five persons, there are no injuries on the private parts and all over the body. It is true that even though doctor has opined about possibility of vaginal intercourse, there are no injuries on the private parts. It is also true that medical certificate at page 60 is dated 13th August 2020, but her examination was done on 4th August 2020.

7. In one more supplementary statement of the victim on 14th September 2020, she has stated that considering circumstances prevailing at that time she is unable to identify the arrested accused persons as same persons who have ravished her.

8. It is true that at that time of hearing of bail the Court is not supposed to appreciate evidence, that's to say one material corroborates with another material. The Court has to see those materials as they stand. There are two medical certificates on record. One is on page no.57 and another is page no. 60. The certificate about examination considering the allegation of sexual intercourse is page no.58. Here the medical officer has not mentioned other injuries on the body of victim. As said above there are no injuries on private part of her body. Where as again she was send for examination on 4th August 2020, and certificate is on page

no. 60. So if consider from that perspective, I think the Applicant can be granted bail. He is behind bar for last three years. The charge-sheet is filed. One is not sure when the trial will start.

9. Learned APP is right that there are allegations of gang rape. The Applicant can be asked to stay outside that area. Hence, the following order is passed :

#### O R D E R

- (a) The Applicant-Kumar Dhaku Rathod be released on bail in connection with C.R. No.393 of 2020, registered with the Narpoli police station for the offences punishable under Sections 376(d), 307, 341, 324, 323, 341 read with 34 of IPC, and under Section 37(1) of the Maharashtra Police Act on furnishing personal bond and surety bond of Rs.25,000/-.
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant is directed to stay outside the limits of Bhiwandi Taluka.
- (d) The Applicant to give alternate address to the police within two weeks after his release.
- (e) The Applicant to enter Bhiwandi Taluka only for purpose of

attending the Court of Judicial Magistrate, First Class till the commitment of case.

(f) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail, after notice to the Applicant.

10. Application is disposed of accordingly.

11. These are my prima facie observations and the trial Court may not be influenced by that.

12. All the parties to act on an authenticated copy of this order.

**[S. M. MODAK, J.]**