

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1170 OF 2023

Bhavesh Gangaram Shinde .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Mr.Vasant Ghorpade for the Applicant.

Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

Mr.Sandeep Dhuri for the Respondent No.2.

Mrs.Pratiksha Gurav, Mother of the Victim present in the Court.

Victim present in the Court.

API R. D.Toradmal, attached to Kapurbavdi Police Station, present.

...

CORAM: BHARATI DANGRE, J.

DATED : 16th OCTOBER, 2023

P.C:-

1. This is the second bail application, the first having been permitted to be withdrawn on 29/08/2022, when I expressed my disinclination to entertain the application, in the wake of the material compiled in the charge-sheet.

2. While the application was being heard, the two affidavits are placed before me, the first being affirmed by the

Victim/Complainant, who has stated that since her sister was being treated with cruelty by the Accused and he used to abuse and assault her, in order to tackle with such a behaviour and being fed up with continuous ill-treatment meted to her sister, who was admitted in the hospital on account of ill-treatment, their parents decided to lodge a complaint to the police and, therefore these accusations were levelled. In paragraphs 6 to 8, she makes the following statements:-

“6. On 08/05/2021, my sister and myself filed complaint of rape by accused which was not happened but with hope that police will arrest him & therefore FIR no.143/2021 was lodged by me with help of sister.

7. I say that in anger on that day as to actually take revenge of every dispute, beating to my sister and every day dispute, I had filed complaint of rape to teach him (accused) lesson with hope that, in future he will not harass my sister in such cruel way.

8. I say that the complaint/FIR was filed by me due to anger and in fit of rage.”

The affidavit dated 16/10/2023 is taken on record and marked ‘X’ for identification.

3. Another affidavit is filed by the parents of Respondent No.2, who have also stated to the following effect :-

“On 02.05.2021, was day of marriage anniversary but fortunately my daughter felt sick and was admitted in hospital. Accused had then come home admitting my daughter in hospital however Malvika (victim) opening door of house asked regarding health of Pallavi, accused instead to say about health, snatched hand of the victim by which victim was thrown away falling down sustaining injury. Accused never bother of daughter and no complaint was entertained by police therefore we filed complaint FIR in dispute in above matter.”

The said affidavit is also taken on record and marked ‘X1’ for identification.

4. The learned A.P.P. has invited my attention to the 164 statement of the victim girl, recorded before the Magistrate, where she reiterated her version in the complaint that when her sister was admitted in the hospital, the Applicant/her brother-in-law, returned home alone and pulled her in the bedroom and committed forcible sexual intercourse with her. When her sister returned, she narrated the incident to her and when she questioned her husband, he is alleged to have stated that he can keep both of them, but they should not disclose the incident to anyone.

5. The victim girl as well as her mother are personally present in the Court and when I specifically and repeatedly questioned them, whether the incident, which they have reported and which resulted in registration of the subject C.R. against the Applicant, had occurred, and emphatically they answer in the negative.

The aforesaid statement is made by them in presence of their Advocate, who represents them. The victim girl and her mother have admitted that Advocate Sandeep Dhuri is representing them and he has been given instructions to that effect.

In short, the case which is now emerging is that the victim had lodged a false complaint in order to teach a lesson to her brother-in-law i.e. the Applicant on account of ill-treatment meted out to her sister.

6. In absence of the affidavits, on the last date of hearing, when the application was heard with the material placed before me in form of the charge-sheet, which compiled the statement of the victim recorded under Section 164 of Cr.P.C. and the statements supporting the case of the prosecution, considering that a helpless and a young girl was exploited by the Accused, by taking benefit of the relationship which they shared, I had expressed my disinclination to entertain the application.

Worth to note that the investigating agency has carried out the entire investigation, which include the preparation of spot panchnama, as the spot was shown by the victim girl. The clothes of the accused and the victim came to be seized and they have been forwarded for analysis. The prosecution is all ready to prosecute the accused in the trial before the Special Court, but it appears that the victim and her family members have now come up with a stand that no such incident, as alleged in the complaint, has ever taken place i.e. there was no sexual assault upon the victim girl. The victim girl and her family members are present before the Court and after conversation with them in the language, which they understand i.e. Marathi, in unequivocal terms, both of them have stated that the incident reported to the police station has never taken place.

7. In the wake of the above, I deem it appropriate to secure the release of the Applicant on bail, since he is arrested on 08/05/2021 and direct the Kapurbavdi Police Station to register an F.I.R. under Section 211 of the IPC, for filing false

complaint against the victim girl as well as those whose statements are recorded and compiled in the charge-sheet, in support of her case that she was sexually assaulted by the accused on 02/05/2021.

The Applicant, therefore, deserve his release on bail on the following conditions :-

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Bhavesh Gangaram Shinde shall be released on bail in connection with C.R.No.I-143 of 2021 registered with Kapurbavdi Police Station (Special POCSO Case No.457 of 2021) on furnishing P.R. Bond to the extent of Rs.25,000/- with one or more sureties in the like amount.
- (c) The Applicant shall mark his attendance before the concerned police station on first Monday of every month between 4.00 and 5.00 p.m.
- (d) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

8. List on 08/11/2023 under caption, 'For Compliance' .

(SMT. BHARATI DANGRE, J.)