

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2125 OF 2022

VAISHALI
ANIL
TIKAM

Sunil Kerappa Thorat

.... Applicant

Versus

The State of Maharashtra

.... Respondent

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by VAISHALI
ANIL TIKAM

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Mr. Ramdas A. Shelke, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for Respondent-State.

Mr. Ajinkya Badar a/w. Ms. Sampada Junnare- Badar, Advocates for First Informant/Intervenor

Mr. M.S. Patil, PC of Jath Police Station, Sangli is present.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th OCTOBER, 2023.

P.C. :

1. By this application, applicant is seeking bail in Crime No.48 of 2022 registered with Jath Police Station for offences punishable under Sections 376(D), 504 and 506 of Indian Penal Code, 1860.

2. It is prosecution's case that on 21st December, 2021, the Complainant travelled from Ashta to Jath by bus, when Complainant reached Jath Bus Stand, Accused No.1 made phone call to her and enquired where she was and stated her that he was going to Guddapur and asked her whether she was coming to Guddapur.

After some time, Accused No.1 arrived at Jath Bus Stand. Then Complainant and Accused No.1 proceeded towards Guddapur on motor-cycle of Accused No.1. It is alleged that on the way to Guddapur, Accused No.1 took the motor-cycle by the side of the road, in one field and told the Complainant that Applicant was coming with money, therefore, he required to halt there for some time. Thereafter, Applicant came there, then Accused No.1 committed forcible sexual intercourse with the Complainant and Applicant made shooting of the said act in his mobile. When the Complainant shouted, she was threatened by accused no.1 and applicant. It is alleged that thereafter the Applicant committed forcible sexual intercourse with the Complainant without her consent and Accused No.1 and Applicant threatened the Complainant to viral the video. It is alleged that the said video was virelled on social media. Thereafter the Complainant lodged the complaint against Accused No.1 and the Applicant.

3. It is contention of learned counsel for applicant that the Complainant and Accused No.1 are relatives. The Applicant has been falsely implicated in this case. The name of the Applicant has not mentioned in the FIR. No specific role is attributed to the

Applicant. Learned counsel further submitted that the alleged offence was committed on 21st December, 2021 and the complaint was lodged on 5th February, 2022. There is an inordinate delay of 45 days in filing the FIR. The mobile in which shooting was taken, is recovered at the instance of Accused No.1. Learned counsel further submitted that Accused No.1 had sent the video of the sexual act through Whatsapp to his friends, and it went viral. The relatives of the Complainant asked her about the incident and thereafter the complaint is lodged. The so called mobile belongs to accused No.1. Therefore, the Applicant is not concerned with the said offence. Applicant is behind bar more than 18 months. Investigation is completed and charge-sheet has been filed. The alleged sexual act committed by the Applicant was consensual. Hence, requested to allow the application.

4. Learned counsel for Respondent No.2 vehemently submitted that the Complainant is a poor lady. Accused No.1 under the pretext of taking her to Guddapur on his motor-cycle, sexually assaulted co-applicant without her consent. The Applicant recorded the incident in his mobile. Thereafter, Applicant also sexually assaulted the Complainant. The Applicant is an influential person.

Relatives of the Applicant had threatened the Complainant. If the Applicant is released on bail, he may give threats to the Complainant and prosecution witnesses. Hence, requested to reject the application. Learned counsel for Respondent No.2 relied on the judgment of the Apex Court in the case of **State of Punjab Vs. Gurmit Singh [1996(2) SCC 384]**. Learned APP reiterates the submissions made by the learned counsel for Respondent No.2.

5. I have heard both learned counsel, perused the FIR and charge-sheet. The allegations against the Applicant are that he along with Accused No.1 sexually assaulted the Complainant. There is delay of 45 days in filing the FIR. It appears from record that when video shooting of the alleged incident went viral, thereafter, the complaint was filed. Name of the Applicant was not initially mentioned in the FIR. The Applicant is behind bar more than 18 months. Investigation is completed. Charge-sheet has been filed. It may take time to conclude trial considering above facts I am inclined to allow the application. I have gone through the case law cited by the learned counsel for Respondent No.2. Facts of cited case and facts of present case are different as in present case there is delay of 45 days in filing complaint.

6. In view of above, I pass following order :

ORDER

- (i) Applicant be enlarged on bail in Crime No. 48/2022 registered with Jath Police Station, on executing P.R.Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (ii) Applicant shall not enter the Taluka where the Complainant is residing. The Applicant shall attend the concerned police station once in a month i.e. on first Monday between 11.00 a.m. to 3.00 p.m. till framing of charge.
- (iii) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (iv) The Trial Court shall decide the case on its own merits in accordance with law, uninfluenced by the observations made in this order.

7. The application is allowed in the aforesaid terms and is accordingly disposed off.

8. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)