

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

BAIL APPLICATION NO. 3184 OF 2021

Chandraprakash Pratap Das
Age 59 years, Occ. Priest Indian
R/o.: A-1, Neelkanth CHS. Ltd.,
Near Hatcase Masjid,
Near G.C.C. Club, Mira Road (East)

(At present in Thane Central Prison)

...Applicant

vs.

1. The State of Maharashtra
(At the instance of Nayanagar Police
Station)

2. XYZ
3. ABC
4. MNO

...Respondents

**ALONGWITH
BAIL APPLICATION NO. 225 OF 2022**

Tutun @ Tapas Rabindra Ghorai
Aged 40 years
Residing at : Sanjog Hotel,
Samare Chawl, Carton Road No. 4,
Borivali (E), Mumbai – 400092
Native Place village Chandawal,
Tal. Meganapur, Dist. Meganapur,
(Presently Thane Jail)

...Applicant

vs.

1. The State of Maharashtra
(At the instance of Nayanagar Police
Station)

2. XYZ

...Respondents

Mr. R. N. Gite a/w Rameshwar N. Gite a/w Adv. Rohit D. Gorade
a/w Mr. Ashwin Pimpale - Advocate for the Applicant in BA 3184 of
2021.

Mr. Prabhanjay R. Dave a/w Mr. Ashwin Pande – Advocate for the
Applicant in BA 225 of 2022.

Mr. Udayan Shah – Appointed Adv. For Respondent Nos. 2 to 4.

Mr. Y. Y. Dabke - APP for the Respondent-State

PSI Dhananjay Garje – Nayanagar Police Station

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

DATE : **09th MARCH, 2023**

P.C. :-

1. Heard respective Advocates in both the Applications and
learned APP and learned Advocate for the Respondents-victim in bail
application no. 3184 of 2021.

2. Both these applications are arising out of C.R. 207 of
2021 registered at Nayanagar Police Station on 26/03/2021. It was
on the complaint of police constable attached to Anti-Human
Trafficking Cell of Vasai-Virar Police Commissionerate area. After
getting secret information the raiding party members alongwith
bogus customers and panchas have visited certain places within
Mira-Bhayandar Municipal Corporation area. There is Soven wine
and dine hotel. One auto rickshaw came and one male and three

females got down, they went towards that hotel. Some of the raiding party members entered into hotel and on inquiry the persons got down from the auto rickshaw told their names as Tutun i.e. Applicant in Bail Application No. 225 of 2022 and three victims.

3. The bogus customer has interacted with the Applicant-Tutun and they were discussing about the consideration and commission. In the meantime, raiding party members came there and they have disclosed their identity. Applicant-Tutun was searched, certain currency notes and certain objectionable articles were found. It was confirmed that the Applicant-Tutun and wanted accused Prashant Baroi have indulged into woman trafficking and accordingly, offence came to be registered under Sections 366A, 370 of the Indian Penal Code and under Sections 4 and 5 of the Immoral Traffic (Prevention) Act and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act.

4. During the investigation, the Police have recorded the statements of three victims and out of them victim Aashu was found to be minor. My attention is invited to different statements recorded of these victims. They are as follows:-

Victim Aashu

- (i) Statement recorded under Section 161 of Criminal Procedure Code on 28/03/2021.
- (ii) Statement recorded under Section 164 of the Criminal Procedure Code before the Court of the JMFC, Thane on 07/04/2021.

Victim Pramila

- (i) Statement dated 19/05/2021 recorded by Police.
- (ii) Her earlier statement under Section 161 and under Section 164 of the Criminal Procedure Code they are not annexed to the charge-sheet.

Victim Priti

- (i) Statement recorded by Police on 28/03/2021.
- (ii) Statement recorded under Section 164 of the Criminal Procedure Code dated 07/04/2021.
- (iii) Statement recorded by Police on 19/05/2021.

5. The Applicant-Chandraprakash in Bail Application No. 3184 of 2021 was arrested subsequently on the basis of the facts disclosed during the investigation. Even though both these Applicants are arrested in one offence allegations against them are different. So far as the Applicant-Tutun is concerned, there is no

allegation that he has raped either girl or woman.

6. On reading the bare act of the Indian Penal Code, it reveals that Section 376 (2)(i) was omitted from statute book on 21/04/2018. It says about committing rape on woman when she is under 16 years of age.

7. Learned Advocate for the Victim submitted that even though it is omitted still Section 4 of the Protection of Children from Sexual Offences Act is invoked against Applicant-Tutun. The Police might have invoked wrong section, now it is for them to take care when the trial will go on before the concerned Court. According to the learned Advocate only the sections under the Immoral Traffic (Prevention) Act can at the most be attracted. They are invoked Sections 4, 8 and 12 of the said Act. It is contended that Section 8 is punishable for maximum period of six months. Whereas under Section 4 the punishment may extend to two years if victim is of the age of 18 years. According to the learned Advocate for the Applicant after reading the statement of the victim Aashu it can be very well said that the Applicant has not lived on earning after utilizing services of the said Aashu.

8. Whereas learned Advocate for the Applicant-

Chandraprakash in Bail Application No. 3184 of 2021 pointed various inconsistencies in between the statements of these three victims. He submitted that the victim has changed the version and even she has changed the place of the offence.

9. Both the learned Advocates submitted that there are various inconsistencies in between the statements of all these victims and if they were put to trial it is difficult to believe them.

10. Learned Advocate for the victims submitted that so far as Applicant-Chandraprakash is concerned the provisions of Sections 4 and 5 of the Protection of Children from Sexual Offences Act are invoked and there is maximum punishment upto life imprisonment. Learned APP also opposed the bail considering the material on record.

11. I have perused the statements given by the victim-Aashu on 28/03/2021 and before the learned Magistrate on 07/04/2021. In her statement under Section 161 she has referred to one Pandit who misbehaved with her. She has also said that he had sexually intercourse with her by asking her to drink some powder. Whereas in her statement under Section 164 she has named one person by name Tapas, who called her on 25/03/2021 and the said Tapas had

arranged a customer and said customer ravished her. His description is mentioned. The said customer is shown as the Applicant-Chandraprakash according to the prosecution.

12. I have also read the statement of Pramila dated 19/05/2021. In that statement she has referred to one Tapas who is one of the Applicant. The said Tapas called her on 26/03/2021.

13. I have also read the statement of victim Priti, dated 19/05/2021. In that statement, she has explained as to how she gave statement before the Police and before the Court.

14. If we will read the various statements given by these three victims, it can be said that they have changed their versions. Out of these three victims, two are major, whereas victim Aashu is minor.

15. Now the issue is whether both these Applicants can be given benefit of these variances at this stage. One can certainly say that the victim Aashu has said about sexual intercourse committed with her. No doubt she has not named the accused. Learned Advocate tried to differentiate in between the place mentioned in both these statements.

16. It is true that this Applicant-Chandraprakash has given

statement on 30/03/2021 as per Section 27 of the Indian Evidence Act and Liquor and MD powder were recovered at his instance. Even my attention is invited to averments in ground no. 'm' to 'o' para no. 3 of the bail application filed before the court of Additional Sessions Judge. My attention is also invited to ground No. 6(i) of the present application. So also, the victim Aashu has made reference of one Tutun who according to the prosecution is the Applicant who was found when the police visited the hotel on 27/03/2021.

17. For the above discussion, I am not inclined to grant bail to both of these Applicants. The Court cannot overlook the fact that these victims come under different background. One does not know their financial conditions. In a normal circumstances, the accused can be given benefit of these variances. But the offence is against society involving women. The victims may be victim of the circumstances.

18. So I do not think that they can be granted bail. The statement of Aashu recorded under Section 164 of the Criminal Procedure Code mentions the name of Tapas and as per Section 4 and 7 of the Protection of Children from Sexual Offences Act, the maximum punishment is life imprisonment. So far as Applicant-

Chandraprakash is concerned there is memorandum statement and in all these circumstances considered together, it shows his involvement.

19. So I do not think that discretion can be exercised in their favour. Hence both applications are rejected. The trial court is directed to expedite the trial and finish it as early as possible.

[S. M. MODAK, J.]