

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

CRIMINAL BAIL APPLICATION NO. 3356 OF 2021

Rahul Basveraj Korven

Age : 19 Years, Occu. : Rickshaw Driver,

R/at : Mhape Gaon, Near Ram Mandir,

Room No.107, Vaishnavi House,

Navi Mumbai.

...Applicant
(Accused No.3)

vs.

The State of Maharashtra

[At the instance of Rabale MIDC

Police Station : Vide C.R.No.56 of 2020]

...Respondent

**ALONG WITH
CRIMINAL BAIL APPLICATION NO. 3354 OF 2021**

Samadhan Sudhakar Gaikwad

Age : 21 Years, Indian Inhabitant,

R/at : Mhape, MIDC, Hutments

Near to Sai Nagar Hotel, Navi Mumbai.

...Applicant
(Accused No.1)

vs.

The State of Maharashtra

[At the instance of Rabale MIDC

Police Station : Vide C.R.No.56 of 2020]

...Respondent

Ms.Anjali Patil i/b. Mr.Abdeali Kothawala, Advocate for Applicant.

Mrs.M.R.Tidke – APP for the Respondent No.1-State.

Mr.Amit A. Gharte – Appointed Advocate for Respondent No.2-
Complainant.

CORAM : S. M. MODAK, J.

DATE : 15th MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicants, learned APP for the Respondent-State as well as learned Advocate for the First-Informant.
2. Both of them were arrested on suspicion in connection with an offence registered at C.R. No. 56 of 2020 registered with Rabale MIDC Police Station on 22nd February, 2022. It was for the offences punishable under Sections 341, 392, 376 and 376-D of the Indian Penal Code, 1860 [“IPC”].
3. As per the version of the First-Informant, she was ravished in two incidents. One is of 19th February, 2020 at about 23.30 hours in one bathroom near unused bus depot on Ghansoli highway and second is in between the intervening night on 19th February, 2020 and 20th February, 2020 at Mumbra near pipeline in a bush. In the first incident, one person is involved and according to the Prosecution, it is the Applicant - Samadhan. Whereas, in the second incident, two persons are involved and according to the Prosecution,

the Applicant is one amongst them. Charge-sheet is filed and yet, the trial has to begin.

4. After hearing both the sides, it can be said that the Prosecution has collected various materials. According to the learned Advocate for the Applicants, inspite of that, it is required to be considered the manner in which those incidents have taken place and about the conduct of the First-Informant. The Police have invoked Section 376-D of IPC. No material is pointed out that both these incidents are interconnected to each other. The first incident took place at Ghansoli, whereas, the second incident has taken place at Mumbra. So far as the first incident is concerned, my attention is invited to the more particulars given by the First-Informant in the supplementary statement and even the identification of the rickshaw alleged to be driven by the Applicant and Activa motorcycle alleged to be used in the second incident by the Applicant – Rahul and its Co-accused. These vehicles were identified by the First-Informant. Even it is submitted that there is a missing complaint filed by the family members of the First-Informant.

5. There is panchanama about seizure of Activa motorcycle on 23rd February, 2020. The Police found the Applicant – Rahul and Co-

accused driving that motorcycle on 23rd February, 2020 February, 2020. Furthermore, there is a memorandum statement given by the Applicant Samadhan on 25th February, 2020 by which, he has produced auto rickshaw and the ornaments alleged to be robbed by him belonging to the victim.

6. The cloths of the First-Informant were also seized on 23rd February, 2020 from the spot which was having semen stains. There is C.C.T.V, footage collected from the area at Diva Station. The First-Informant and another lady visited that shop for the purpose of selling ornaments. In that C.C.T.V, footage, it is not the case of the Prosecution that any of the Applicants are visible. There is one more panchanama about collection of C.C.T.V, footage which shows that one auto rickshaw has passed on towards Mhape depot. The Prosecution claims that this auto rickshaw was driven by the Applicant – Samadhan. My attention is invited to the medical certificate. It is true that the First-Informant is major of 19 years old and there are old tears of hymen and one abrasion was noticed near her breast.

7. After filing of charge-sheet, parade is conducted on 8th September, 2020, wherein, the Applicant First-Informant has

identified all the three Accused persons which includes both the applicants.

8. Learned Advocate for the Applicants submitted that this parade is conducted after a gap of 8 months and these names were known to the First-Informant as it is reflected from a statement of her husband. It is also submitted that the description of auto rickshaw and Activa was not given by the First-Informant. Even after parade, supplementary statement of the First-Informant is not recorded thereby showing which of the Applicant is involved in which of these incidents.

9. Learned APP for the Respondent-State and learned Advocate for the First-Informant submitted that considering the overwhelming materials, none of the Applicants deserve to be released on bail. It is true that there are materials collected during investigation.

10. It is also true that the Applicants were identified by the First-Informant. But, it is also true that the parade was conducted after 8 months and supplementary statement of the First-Informant is not recorded.

11. As said above, these two incidents are separate. One at Ghansoli and another is at Mumbra. So, the Applicant Samadhan

cannot be equated with other two Applicants. It is also true that for an offence under Section 376-D of IPC i.e. involvement of gang rape, minimum punishment is twenty years which may be extended to life.

12. I am inclined to grant bail only to the Applicant – Samadhan.

Because, there is no allegation of gang rape against him. It is true that there is overwhelming material but the fact that the circumstances in which that incident took place, cannot also be overlooked by this Court. If the FIR and supplementary statements are perused, one may find that the First-Informant had gone to Ghatkopar on 18th February, 2020 and she was going to Mumbra. Somehow, she could not go there and that is why, she dropped at Railway Station. Then she went to Mumbra Railway Station and was there during entire night. From there she went to Diva. From there she went to Thane Station along with one beggar and then she got trans harbour train and gone to Ghansoli and while returning home, she was ravished near the Ghansoli highway. She is also of major age. So, I am inclined to grant bail only to Samadhan.

13. So far as the Applicant – Rahul is concerned, there is allegation of rape along with one another person. He was found by the Police along with that Activa. This Activa is identified by the First-

Informant. He was also identified during parade. So, I am not inclined to grant bail to Rahul. Hence, following order :-

O R D E R

- (i) Criminal Bail Application No. 3356 of 2021 is rejected.
- (ii) Criminal Bail Application No. 3354 of 2021 is allowed.
- (iii) Applicant Samadhan Sudhakar Gaikwad be released on bail in connection with C.R. No. 56 of 2020 registered with Rabale MIDC Police Station on furnishing Personal Bond and Surety Bond of Rs.25,000/- with Local Surety.
- (iv) Applicant Samadhan Sudhakar Gaikwad to give attendance to Rabale MIDC Police Station on first Monday of every month from 10.00 to 12.00 noon for one year.
- (v) Applicant - Samadhan not to threaten the Prosecution witnesses or allure them in any manner.
- (vi) In case of breach of any of the conditions, the bail of the Applicant – Samadhan is liable to be cancelled after hearing.

14. It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

15. Applications are disposed of in the aforesaid terms.

16. All the parties to act on an authenticated copy of this order.
17. Office to pay fees to the learned Appointed-Advocate for the Respondent No.2-Complainant, as per Rules.

[S. M. MODAK, J.]