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

CRIMINAL BAIL APPLICATION NO. 3621 OF 2022

Houshyar Singh Kali Singh Labana

Age : 43 Years, Indian Inhabitant

Occupation : Rickshaw Driver,

R/at : Gandhi Nagar, Jhopadpatti,

Near Thesildar Office, Ambernath-West,

District : Thane.

...Applicant

vs.

State of Maharashtra

[Through Ulhasnagar Police Station]

...Respondent

Dr.Abhinav Chandrachud i/b. Mr.Abhishek Mishra – Advocate for Applicant.

Mr.H.J.Dedhia – APP for the Respondent-State.

Mr.S.V.Shinde – PSI – Ulhasnagar Police Station–Thane.

CORAM : S. M. MODAK, J.

DATE : 21st APRIL, 2023

P. C. :-

1. Heard learned Advocate Shri.Abhinav Chandrachud for the Applicant and learned APP Shri.H.J.Dedhia for the Respondent-State today. On the last date, I have heard learned APP Shri.A.R.Kapdnis. Officer is present.

2. This is an unfortunate incident wherein there is an allegation that the First-Informant who was raped by none other than her own in-law i.e. present Applicant. It is also important to consider under which circumstances, that allegation is made. Though the First-Informant married with the son of the present Applicant, on 11th February, 2018, she has not established any physical relationship with her husband.

3. The First-Informant, her husband, her in-laws were residing together at Ulhasnagar – Camp No.5. There is an allegation that the present Applicant used to have sexual relationship with the First-Informant and it has happened on more than one occasion in the same matrimonial house. There is further allegation that surprisingly, even this fact was told to her mother-in-law who is also the Accused (yet she is not arrested), instead of convincing the present Applicant, she has insisted for the First-Informant to continue those relationships. It is further alleged that the mother-in-law used to close the door of the bedroom from the outside and used to put on the T.V, with loud volume.

4. The First-Informant was pregnant and she realized this fact on 20th February, 2020. It was told by her to her relatives as well as to

all the Accused persons. However, there was abortion on a day next to 21st February, 2020.

5. According to Mr.Chandrachud she has given different versions. My attention is invited to the averments in the FIR, history disclosed by her to the Medical Officer and the facts stated in her statement under Section 164 of the Code of Criminal Procedure, 1973 [“Cr.PC.”]. Mr .Chandrachud further submitted that the First-Informant has never complained of all these atrocities when she cohabitated till 23rd April, 2022. She left the matrimonial house on that day and the FIR is lodged on 28th April, 2022.

6. According to him, as she left the matrimonial house, only with an intention not to resume the cohabitation and then only, she has come forward to lodge such FIR complaining all the false allegations. The Ulhasnagar Police Station registered an offence under Section 376(2)(F), 498(A), 323, 114, 504, 506 read with 34 of Indian Penal Code, 1860 [“IPC”] against this Applicant, against mother-in-law, husband and one sister-in-law.

7. With the assistance of both the sides, I have perused the history told by the First-Informant to the doctors. It is on Page No.51. She has said that she was ravished every alternate day by the

father-in-law. She has also opined that her husband is incapable to have a child. So far as incapacity of the husband is concerned, there are no materials pointed out to me during arguments. Whereas, in her statement under Section 164 of Cr.P.C., she has stated that she was taken to doctors by the in-laws and there was forceful abortion.

8. Learned Advocate Shri.Chandrachud submitted that this is inconsistent with what she has said in the FIR. Their she has said that there was abortion as she was ravished by the Applicant one day earlier to that.

9. Learned Advocate Shri.Chandrachud relied upon the following judgments :-

(i) ***Satender Kumar Antil V/s. Central Bureau of Investigation and Another***¹ and more specifically observations in Para No.12 about what are the principles for grant of bail.

(ii) On the point of delay in lodging of FIR and how it has to be considered, he relied upon a judgment in case of ***Gajanan Dashrath Kharate V/s. State of Maharashtra***²

10. Learned APP Shri.A.R.Kapadnis on last occasion submitted that this Court has to consider under what circumstances, the Applicant

1 (2022) 10 Supreme Court Cases 51

2 (2016) 4 SCC 604

committed all these acts and there is no possibility that they are false in nature. He also tried to explain under what circumstances, she was ravished by the Applicant and he also emphasized that the other family members have directly or indirectly supported the act of the present Applicant. He invited my attention to the statement of the sister of the First-Informant. She is one Kushish Amit Khatwani. She has stated about the facts disclosed to her by the First-Informant. As against this, it is submitted by learned Advocate Shri.Chandrachud that the facts stated by this witness are nothing but hear say and she is not having any personal knowledge.

11. When there was allegation about abortion and there is allegation that she was taken to the doctors, on the last date, a query is put to learned APP, whether there is an investigation carried out on that line. Today, it is submitted by learned APP Shri.Dedhia that Police have contacted the doctor whose dispensary is shown by the Applicant but unfortunately, he has destroyed all the record during COVID period. Even learned APP Shri.Dedhia emphasized that wife of the present Applicant is yet avoiding the arrest and her Anticipatory Bail Application is rejected by the Court of Additional Sessions Judge – Kalyan.

12. If we consider all the materials, it can be said that allegations are serious and particularly when it is against the father-in-law who is supposed to take care of his daughter-in-law. But, ultimately the Court has to see what is the principles for grant of bail. Hon'ble Supreme Court and this Court in various judgments have emphasized why the provision of bail is incorporated in the Code of Criminal Procedure. Said discussion find place in Para No.12 of the judgment in case of ***Satender Kumar Antil (supra)***. It is observed that bail should not be refused just by way of punishment. It is further observed that are there chances of absconding and whether the allegations are very serious also needs to be looked into.

13. It is also true that in ***Gajanan Dashrath Kharate (supra)*** case, it is observed that if there is a delay in lodging of FIR, it has to be viewed with caution. All depends upon the facts and circumstances particularly when the relationship is arising out of a marriage. So, generally the parties approaches the Police by way of last resort unless it is so urgent.

14. When I have considered all these materials, I intend to grant bail to this Applicant. It is for two reasons. One is the investigation is already complete and secondly, so far as the allegation of abortion is

concerned, there are no supporting materials. The statement of the doctor shown to me today was recorded after this Court made certain queries on last date. It is important to note that even he has said that he is not dealing with such type of patients.

15. Furthermore, sister of First-Informant, has stated that the incident was disclosed to her at the fag end. She has nowhere stated that it was disclosed to her at any time when the Applicant was residing in the matrimonial house. So, considering all these facts, without making any furthermore observations, this Court can only say that the Applicant is entitled to be released on bail.

16. If his wife is not traceable, the Police can take steps and for that purpose, the Applicant cannot be detained behind bar, if otherwise, he is entitled to be released on bail. Subject to conditions, bail can be granted. Hence, order :-

O R D E R

- (i) Application is allowed.
- (ii) Applicant – Houshyar Singh Kali Singh Labana be released on bail in connection with C.R. No. 196 of 2022 registered with Ulhasnagar Police Station – Thane on furnishing personal bond and surety bond of Rs.25,000/-.

- (iii) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.
- (iv) Applicant to give attendance to Ulhasnagar Police Station – Thane on first and third Friday from 10.00 to 12.00 noon for one year from today.
- (v) In case of breach of any of the conditions, the bail of the Applicant is liable to be cancelled after hearing.

17. 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.

18. Application is disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]