



Diksha Rane

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

BAIL APPLICATION NO.849/2024

MOHAMMAD ARIF GULAM SARVAR ..APPLICANT

VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. V. S. Tiwari a/w. Adv. Priya Muthupandi a/w. Adv. Priti
Tiwari for the applicant.

Smt. Megha Bajoria, APP for the State.

API Vishal Nazare, Juhu Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 23, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 376, 323, 506(2), 341, 342 of the
Indian Penal Code (hereafter 'IPC' for short) registered on
3/8/2021 vide C.R. No.531/2021 with Juhu Police Station.

3. The date of the incident was 3/8/2021, time around
4.00 a.m. in the morning. The victim did not have a
permanent place of residence. She was abandoned by her
parents. The victim was living on footpath. At 4.00 a.m., the

victim had taken a stray dog for a walk. As per the victim, the applicant who is an auto-rickshaw driver stopped his rickshaw to give her a lift. The victim wanted to go to the railway station. It is alleged that the applicant offered her some food. He took her to a deserted place. It is alleged that he raped her in an abandoned bus.

4. The applicant was arrested on 4/8/2021. The victim went to the Cooper Hospital where she was examined. The history narrated by her in the medical record reveals that two unknown persons came by auto-rickshaw and both of them committed the act which is an offence under the aforesaid sections. In the First Information Report (FIR), she refers to her perpetrator as an unknown person. The victim was again examined by the doctor on 7/8/2021.

5. Learned counsel for the applicant submitted that as per history narrated by the survivor, she does not know the accused. In the medical history it is stated that two auto-rickshaw drivers forcibly took the victim into a parked bus and committed the aforesaid act. Learned counsel further submitted that no test identification parade has been held. According to him, it is only on the basis of the statements of

other auto-rickshaw drivers who state that the victim was last seen in the company of the applicant, that he is made the accused.

6. Learned APP for the State vehemently opposed the application for bail. She submitted that the accusations are serious. Learned APP submitted that the statement of the victim under Section 164 of the Code of Criminal Procedure could not be recorded as the victim is untraceable. Learned APP, on instructions, submitted that every possible effort is being made to trace the victim and ensure that she will be looked after properly in a shelter Home. The trial Court is requested to ensure compliance.

7. The applicant is in custody since 4/8/2021 with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. In the facts and circumstances of the present case, as the applicant is incarcerated since 4/8/2021, and he does not appear to be a flight risk, in my opinion, prolonging the custody of the applicant would amount to a pre-trial punishment. The accusations are undoubtedly serious. The

applicant will face the consequences post-trial if found guilty. In the present facts, the applicant need not be detained indefinitely as a pre-trial punishment when he does not appear to be flight risk. Hence, the following order:-

ORDER

- (a) The application is allowed.
- (b) The applicant- Mohammad Arif Gulam Sarvar in connection with C.R. No.531/2021 registered with Juhu Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more local sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Juhu police station, once in a fortnight, on first and third Monday of every Month, between 11.00 a.m. and 1.00 p.m. till the trial concludes. It is open for the applicant to apply for modification of this condition at a later stage before the trial Court. Such application shall be considered on its own merits.
- (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. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant shall surrender his passport, if any, to the investigating officer.

8. 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 law, uninfluenced by the observations made in this order.

9. The application is disposed of.

(M. S. KARNIK, J.)