

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2021 OF 2023

Dhiraj Shribaleshwar Singh and Another ...Applicants

vs.

The State of Maharashtra and Another ...Respondents

Mr. Sunil Lalla a/w. Satyendra Singh, for the Applicants.

Mrs. G.P. Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 19, 2024

P.C.:

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

2. The applicants who are arraigned in C.R. No. 1188 of 2022 registered with Santacruz police station for the offences punishable under sections 376-D, 323 and 328 of the Indian Penal Code, 1860 have preferred this application to enlarge them on bail.

3. The first informant/victim, a 22 years lady, works at a jewelry shop. She is estranged from her husband. She had known accused No. 1 Arvind Yadav and No. 2 Akshaykumar Mahatu, who also work at the same shop. She had known applicants/accused No. 3 Dhirajkumar Singh and No. 4 Nandlal, who are the friends of co-accused Arvind and Akshay.

4. On 20th November, 2022 at about 9.50 pm the co-accused Arvind and Akshay took the victim to Carter Road, Bandra for a

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stroll. At about 10.30 pm co-accused Arvind and Akshay returned with water bottle and cold drink. A cold-drink was offered to the victim. As it had pungent smell the victim declined to drink. However, the co-accused made her to have the said drink. The victim started vomiting.

5. On the pretext of dropping the victim at her room, accused Arvind and Akshay allegedly took the victim to the room of the applicant No. 1/accused No. 3 Dhiraj. Co-accused Akshay left the room as he had to go to Parle. Thereafter, the victim alleged, accused No. 1 Arvind initially had forcible sexual intercourse with her without her consent. When she tried to resist and raise alarm, the applicant Dhiraj gagged her mouth and assaulted her. Thereupon, accused No. 1 Arvind sexually exploited her. The victim alleged the applicants Dhiraj and Nandlal (accused Nos. 3 and 4) took turns to have forcible sexual intercourse without her consent. On the next day, the victim lodged the report.

6. The learned counsel for the applicants submitted that the version of the victim is unworthy of credence. A endeavour was made to draw home the point that there was delay in reporting the matter to police. The learned counsel for the applicants made an effort to demonstrate that the allegations in the FIR are improbable. The victim could not have been molested in a room which is situated

in thickly populated chawl, submitted the learned counsel for the applicants.

7. It was also urged that the co-accused Akshay has been released on bail by this Court by an order dated 24th August, 2023. Therefore the applicants also deserve the same dispensation.

8. The learned APP resisted the prayer for bail. It was submitted that the victim had given a vivid account of manner in which the applicants and the co-accused had sexually exploited her. At this stage, there is no reason to disbelieve the version of the victim, submitted the learned APP.

9. I find substance in the submissions of the learned APP. The victim has indeed narrated the circumstances in which she was taken to the room of applicant/accused No. 1 Dhiraj by administering her an intoxicant laced cold drink. The medico legal examination of the victim lends prima facie support to the version of the victim. Before the medical officer, the victim has narrated the manner in which she was taken to the room of applicant No. 1/accused No. 3 Dhiraj and the consequent sexual exploitation. To add to this, in her statement recorded before the learned Metropolitan Magistrate under section 164 of the Code of Criminal Procedure, 1973 the victim has reiterated the allegations of forcible sexual assault.

10. In the circumstances, I find it difficult to accede to the

submissions on behalf of the applicants that the version of the victim is unworthy of credence. The victim has narrated that she was assaulted and her mouth was gagged when she tried to resist and raise alarm. Moreover, the incident had occurred at about midnight. Therefore, the submission that the incident could not have taken place in a thickly populated area may not carry substance, at this stage.

11. The applicants are not justified in claiming parity with accused No. 2 Akshay. The first informant consistently stated that after she was taken to the room of the applicant No. 1/accused No. 3 Dhiraj, accused No. 2 Akshay had left the said room. Thus, having regard to the fact that no role of sexual assault was attributed to accused No. 2 Akshay, this Court was persuaded to grant bail to him. In contrast, there are specific allegations against the applicants that the applicants and the co-accused No. 1 Arvind sexually exploited the victim. At this stage, the fact that the victim had not implicated the co-accused Akshay for the alleged sexual exploitation, prima facie, reflects upon the veracity of her claim.

12. In the aforesaid view of the matter, I am not persuaded to exercise the discretion in favour of the applicants.

Hence, the following order.

ORDER

1] The application stands rejected.

2] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)