

Shailaja

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

CRIMINAL BAIL APPLICATION NO.3454 OF 2022

Sumit Suresh Kolap] **Applicant**
Vs.
The State of Maharashtra and another] **Respondents**

.....

Mr. Arun Rajput a/w Mr. Viral Mukte, for Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent No.1 – State.

Ms. Mayuri D. Hatle, for Respondent No.2 (through V.C.).

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 31st JANUARY, 2024.
PRONOUNCED ON : 1st FEBRUARY, 2024.

P.C.

1. The applicant prays for his release on bail who is being prosecuted by *Khadakpada* Police Station, *Kalyan* vide Crime No.352 of 2021 for the offences punishable under sections 376, 328 r/w 34 of the Indian Penal Code.

2. Facts in brief, are as follows.

3. Complainant is the victim. She lodged an First Information report on 22nd November, 2021. Her husband had died due to some illness on 4th August, 2021, who was aged about 35 years.

4. The complainant was acquainted with the applicant and co-accused - Jitu Bhore, who were friends of her deceased husband. One Omprakash was also friend of her husband.

5. In the month of June, 2021, accused – Jitu Bhore was in need of money and, therefore, he requested the complainant to lend him loan of Rs.30,000/-. The complainant informed her husband and accordingly, she lent loan of Rs.30,000/- to accused – Jitu Bhore in exchange of his Auto Rickshaw which was driven by her husband for three months. The complainant used to collect daily fare earned from the business of rickshaw which was being driven by her husband, however, for non payment of installments, company took away the rickshaw.

6. Meanwhile, accused – Jitu Bhore did not return the amount of loan given to him. After the death of her husband, the complainant was in need of money and, therefore, she was insisting upon accused - Jitu Bhore to repay the loan amount.

7. On 20th November, 2021, the complainant asked Jitu Bhore about her money which he refused. The complainant thereafter

asked Jitu Bhore to meet her near *Shahad* Bridge Rickshaw Stand. Accordingly, she met Jitu Bhore at *Shahad* Rickshaw Stand. Accused - Jitu Bhore accompanied the complainant in his rickshaw for a talk. While driving rickshaw, accused – Jitu Bhore had a conversation with her during which he informed that CNG in the rickshaw is depleted and, therefore, to fill the CNG, he will have to go to *Durgadi*. When rickshaw was stopped near CNG pump, the applicant came over there in another rickshaw. In fact, Jitu Bhore had called the applicant on mobile phone. The applicant reached there and requested the complainant to take cold drink which he had brought in a bottle. He told the complainant that, भाभी ऐ कोल्डींग बॉटल पिले, तुम्हारे लिए लाई है, तु अपनी भाभी है, तुम्हारा खयाल रखना हमारा काम है. Accordingly, complainant drank the cold drink and within ten minutes, there was a feeling of dizziness. Thereafter, she was taken by accused – Jitu Bhore and the applicant in the rickshaw at the house of Omi in *Ambika Nagar*. When the complainant was under the influence of some stupefying substance given to her by the applicant, she was raped by him by tearing her clothes. Subsequently, she was brought back to her house by the applicant and co-accused Jitu Bhore. As she was in a state of intoxication, she could not lodge a report on the same day.

8. A crime was registered. Investigation was conducted and charge-sheet has been filed.

9. Co-accused – Jitu Bhore has been released by a Co-ordinate Bench of this Court vide an order dated 9th November, 2023.

10. I heard Mr. Rajput, learned Counsel for the applicant, Mr. Palkar, the learned A.P.P and Ms. Mayuri D. Hatle, for the complainant through V.C.

11. Learned Counsel for the applicant submits that the applicant has been falsely implicated in this case. The applicant did not administer any stupefying substance to the victim. C.C.T.V footage, as per record, reveals that it was accused – Jitu Bjhore who brought beer bottles from a Beer Shop which is evident from the statement of liquor shop owner - Vicky Prakash Talreja that the person who is seen in the CCTV footage is accused – Jitu Bhore. Counsel would submit that the applicant did not commit any forcible sexual intercourse with the complainant since there is no medical report. Rather, the complainant herself refused to undergo medical test which is evident from the medical certificate at page 25. However,

it is a matter of record that ultimately she was examined by the Medical Officer. Counsel would submit that the applicant is incarcerated for more than two and half years, without commencing the trial. He also raised a ground of parity in view of release of co-accused – Jitu Bhore by the Co-ordinate Bench of this Court.

12. Learned A.P.P and learned Counsel appearing for respondent No.2 objected release of the applicant on bail on the ground that role attributed to accused – Jitu Bhore is different than the role attributed to the applicant since he committed forcible sexual intercourse with the complainant after administering stupefying substance in the cold drink. Learned A.P.P invited my attention to the statement of Omi alias Omprakash Parikh, one of the friends of complainant's husband, in the bedroom of whose house, the complainant was taken by the applicant and accused – Jitu Bhore where she was subjected to forcible sexual intercourse by the applicant. There seems to be no reason to doubt the statement of the complainant/victim in the facts and circumstances of the case. The applicant is, therefore, not entitled to take any benefit on the ground of parity.

13. It is submitted by the learned A.P.P that since the complainant and the applicant are residents of the same vicinity, there is every likelihood of threat to the life of the complainant and her minor daughter since there is no male member in the family now. This apprehension of the learned A.P.P cannot be said to be without any substance. The nature and manner of commission of the offence, *prima facie*, reveals that the complainant was subjected to forcible sexual intercourse by administering a stupefying substance which is a serious offence. There is every likelihood of either repeating the offence by the applicant or even to extend threats to the complainant and her minor daughter. Medical report also confirms the fact of possibility of sexual intercourse.

14. *Prima facie*, having considered the facts and circumstances of the case, I am not inclined to release the applicant on bail, hence, application is rejected. However, looking to the period of incarceration of the applicant, the trial Court is directed to frame a charge within four weeks from the date of passing of this order and thereafter, conduct the trial as expeditiously as possible and, in any case, conclude the same within one year thereafter.

15. Needless to say that, these are, *prima facie*, observations *sans* merits and demerits of the case.

16. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]