

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.595 OF 2024

Haroon Hamza Rashid

.. Applicant

Versus

State of Maharashtra and Ors.

.. Respondents

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- Mr. Anurag Pratap Ghag, Advocate for Applicant.
 - Ms. Sangita Phad, APP for Respondent Nos.1 and 2.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 26, 2024

P.C.:

1. Heard Mr. Ghag, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent Nos.1 and 2.

2. Revision Applicant takes exception to the impugned order dated 24.09.2024 passed by the learned Trial Court rejecting his discharge Application. Applicant is arraigned as Accused No.1 in the crime. His name is Haroon Hamza Rashid. The date of the incident as having been occurred is recorded in the First Information Report (for short '**FIR**') as 01.01.2015 to 01.06.2015. The FIR is appended at page No.82 of the Application.

3. With the able assistance of Mr. Ghag and Ms. Phad to a certain extent I have perused the FIR. The statement of the First Informant – Private Complainant who is arraigned as Respondent No.3 before me is at page No.80 of the Application. I have perused the said

statement. What is intriguing after reading the said statement is admittedly the long delay in filing the FIR after a hiatus of almost three and half years.

4. Mr. Ghag would draw my attention to page No.136 which is the duty record / attendance record obtained by the Investigating Officer of the Revision Applicant – Accused No.1 for the period of 01.01.2015 to 31.12.2015. Perusal of the said record reveals that from 01.01.2015 to 02.08.2015, Revision Applicant was not posted at the concerned hospital at all. It records that Revision Applicant was posted at the hospital where the incident took place with effect from 03.08.2015 onwards after which he was assigned various duties.

5. At this juncture, Mr. Ghag would point out to the Court that Respondent No.3 – First Informant has also revised her statement dated 16.10.2018 in respect of the second and third incident stated therein *qua* the Accused No.4, which does not concern the present Applicant before me. The allegation against the Applicant is with respect to the first incident having occurred on 01.01.2015 rather on the intervening night between 01.01.2015 and 02.01.2015 between 10:30 p.m. to 11:00 p.m.

6. Mr. Ghag would next invite my attention to the page No.220 of the Application. The document placed before the Court is the movement order, *inter alia*, pertaining to Revision Applicant before

me. It is seen that said impugned order is dated 13.07.2015 and it directs the Applicant to proceed to M.H. Kirkee c/o. 56 APO for permanent posting and it records that he shall leave his present Unit on 14.07.2015 (A.N.) and he shall report to his new Unit on 28.08.2015. This movement order is signed by the Captain and Commanding Officer. It is obtained by prosecution itself during investigation and annexed to the charge-sheet.

7. There is certificate dated 31.10.2018 issued by the Commanding Officer certifying that Revision Applicant was posted in the 357 FD Hospital C/o. 99 APO from 28.01.2012 to 14.07.2015. This certificate is appended at page No.221. In view of this record, the case of First Informant – Complainant as stated in her complaint dated 16.10.2018 with specific reference to Revision Applicant in unnumbered paragraph No.5, page No.80, *inter alia*, alleging and stating that Revision Applicant was working in the same hospital as that of hers and committed the act on 01.01.2015 becomes a suspect. In the same breath, lodging of the complaint after a hiatus after more than three and half years is undoubtedly required to be considered in these facts. The most glaring aspect brought to my notice is the documentary evidence collected by the prosecution at page Nos.135 and 220 which are referred to and delineated hereinabove which clearly militate against the prosecution case.

8. The impugned order is dated 24.09.2024, appended at page No.263. Paragraph No.9 of the impugned order records that since the complainant – victim is a girl [though she is married lady with a nine year old son at the then time as also had her husband who expired subsequently thereafter in the year 2017] there could be no reason for her to make baseless allegations against the person who was not even present at the place of incident. It further goes to record that some chats and other electronic record has been seized during investigation which would certainly connect the Accused referring to the Revision Applicant to the alleged crime but the same is not so incidentally. Rather it is a vague finding which cannot be established *prima facie*.

9. What is shockingly observed by me is that the said paragraph further records that plea of alibi cannot be taken into consideration at the stage of framing of charge as it would require conclusive proof which would be possible during the trial. This finding in my opinion in the light of the material and evidence collected by the prosecution and duly referred to and delineated hereinabove appended at page Nos.136 and 220 of the Application having not been considered is clearly unsustainable in law. In that view of the matter, I propose to hear the learned APP and private Respondent No.3 – Complainant who is deaf and dumb as seen from the record in the matter since an arguable case is made out by Mr. Ghag for stay of the impugned order.

10. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Applicant is directed to serve the Respondent No.3 a copy of this order and copy of the Criminal Revision Application and inform her about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Criminal Revision Application on or before the next date. Ms. Phad waives service for Respondent Nos. 1 and 2. She has received a copy of brief. Respondent No.3 – Complainant is directed to remain present either through herself or through Advocate. If the Respondent No.3 desires to be represented by an Advocate, the legal aid she can immediately approach the High Court Legal Services Committee of this Court and the Secretary is directed by this Court to appoint an appropriate Advocate to aid and assist and espouse the cause of Respondent No.3.

11. Mr. Ghag has also argued the fact that in view of the impending case against the Applicant before me, he has lost out all his chances for promotion in the meanwhile. These are very strong facts for consideration of the Court.

12. Stand over to 10th December, 2024.