

(1993) 06 BOM CK 0017
In the Bombay High Court
Case No : Bail Application No. 1004 of 1993

Yerguntha Sudarshan Rao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 376, 376(2), 376(B)

Citation : (1993) 3 BomCR 663

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : A.G. Sabnis, Manjula Rao and Y.P. Yagnik, for the Appellant; D.Y. Mirajkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Savant, J.—Heard both the learned Counsel at some length, Shri Sabnis for the applicant and Shri Mirajkar for respondent-State.

2. This is an application for bail by a Police Inspector who has been charged with the offence of custodial rape punishable u/s 376(2)(a) of the I.P.C. read with section 376B of the I.P.C. The applicant was the Senior Police Inspector attached to the Vigilance Branch, Bombay and a raid was conducted in the evening of 21st August 1992 at Citadel Hotel, Khar, Bombay in connection with C.R. 263 of 1992 from where certain call girls including Reshma, the prosecutrix in this case, were brought to the vigilance branch, H.Q. late in the evening. It is alleged that Reshma was interrogated by the applicant alone in the privacy of his room where he later committed rape on her, during the mid-night between 21st and 22nd August, 1992.

3. It is true that this Court had granted anticipatory bail to the applicant by its order dated 20th November 1992 in Criminal Application No. 3460 of 1992. This Court had, then prima facie come to the conclusion that the story of the girl was not believable and that her statement was recorded much later. A doubt was

expressed about the absence of the statement of Asst. Commissioner of Police (A.C.P.) Padvi and in the circumstances anticipatory bail was granted in the sum of Rs. 3,000/-. The State moved the Supreme Court by filing SLP No. 3182 of 1992 on 7th December 1992. Two affidavits were filed before the Supreme Court to point out the conduct of the applicant. Suffice it to say that the Supreme Court by its order dated 12th February 1993 cancelled the anticipatory bail granted to the applicant. The Supreme Court observed that this was not a fit case for the exercise of powers of grant of anticipatory bail but since the applicant's Counsel before the Supreme Court volunteered that the applicant would surrender forthwith, the Supreme Court refrained from assigning any reasons for cancellation of the bail. This has been so stated in the order of the Supreme Court itself. While permitting the State to file the charge-sheet and giving liberty to the applicant to move the learned Session Judge, the Supreme Court directed that the trial Court should ignore the observations made by the High Court while granting anticipatory bail on 20th November 1992.

4. It must also be mentioned that on 20th November 1992 itself the applicant had filed another petition in this Court being Criminal Writ Petition No. 1532 of 1992 for quashing the F.I.R. being C.R. 242 of 1992 lodged against him and also for transfer of investigation from D.C.B., C.I.D., Bombay to C.I.D. Pune or to some other agency. The applicant had alleged bias and vendetta on the part of the investigating agency and some officers at Bombay. An affidavit-in-reply was filed by A.C.P. Shivaji Babar wherein it was denied that there was any bias or vendetta against the applicant or any attempt to implicate him falsely. The allegations made by the applicant against various officers were denied on affidavit. Ultimately Writ Petition No. 1532 of 1992 was withdrawn by the applicant on 17th December 1992 when the Division Bench passed the following order :

"Mrs. Rao submits, after some arguments, that she does not want to press this petition and may be permitted to withdraw the same. Permission to withdraw granted."

5. As stated earlier, the applicant was granted anticipatory bail by this Court on 20th November 1992 and was on bail till February 12, 1993 when the Supreme Court cancelled the bail. During this period, however, Writ Petition No. 1532 of 1992 came to be disposed of as above. Apart from Writ Petition No. 1532 of 1992, two panchas involved in the raid on Citadel Hotel from where prosecutrix Reshma was picked up, namely, (i) Abdul Aziz and (ii) Mohammed Gaus Kasim Shaikh filed Writ Petition No. 1576 of 1992 on 7th December 1992. They alleged that certain police officers who were the respondents in the said writ petition, had threatened and assaulted them and that their statements were forcibly obtained in connection with the panchanama in the Citadel hotel raid case. Prayer in the petition was that action against the said Police Officers including A.C.P. Shivaji Babar, P.I. Kumbhar and P.I. Wagle be taken. An affidavit in reply was filed by A.C.P. Bankar denying the said allegations and on 15th March 1993

the said Criminal Writ Petition No. 1576 of 1992 was withdrawn by the said two panchas. The learned Sessions Judge who has now passed the impugned order on 30th March, 1993 refusing to grant bail in this case has referred to this fact in para 23 of his order and has observed that the said two panchas had changed their versions from time to time and there was strong reason to believe that the applicant had used his influence to win-over the witnesses for the purpose of nullifying their earlier statements after he was granted bail by this Court on 20th November 1992. As stated earlier Criminal Writ Petition No. 1576 of 1992 was filed by the said two panchas on 7th December 1992 and was withdrawn before the Division Bench of Mohta and Shah, JJ., on 15th March 1993. During this period the applicant was on bail prior to the cancellation of bail by the Supreme Court.

6. Reverting to the present application for bail, there is a statement of prosecutrix Reshma and of two lady constables who were on duty in the office of the applicant, namely, lady Police Constable Surekha Parshuram Kale and lady Police Constable Sandhya Sugandh Ahivale. There is a reference to the door of the room of the applicant being closed between 11.30 p.m. and 2.30 a.m. during the mid-night between 21st and 22nd August 1992. This is also mentioned in the statement of Reshma herself who was subjected to rape by the applicant and in the statement of the two other witnesses viz., Head Constable Govind Torane who was the orderly of the applicant and head constable Shankar Rane. Head Constable Govind Torane has referred to the applicant asking him to get Reshma in his room from the main hall where the girls picked up from the Citadel Hotel were seated. Similarly head constable Shankar Rane has also stated about the prosecutrix being called in the room of the applicant and being closeted with him between 11.30 p.m. and 2.30 p.m.

7. After the Supreme Court passed the order on 12th February 1993, charge-sheet was filed alleging that the applicant had, during the mid-night between 21st and 22nd August 1992 in the office of the Senior Inspector of Vigilance Branch, Crime Branch, C.I.D., Bombay committed an offence punishable u/s 376(2)(a) of the I.P.C. read with section 376B of the I.P.C. In the mean-while it appears that sanction to prosecute was accorded by the State Government on 17th February 1993 u/s 197 of the Code of Criminal Procedure and the applicant was suspended.

8. After the Supreme Court order, an application was made to the Metropolitan Magistrate for bail which has been rejected on 30th March, 1993. The learned Magistrate observed that on consideration of the rival submissions and on perusal of the police papers and documents, he was of the opinion that this was not a fit case for exercising discretion in favour of the applicant in the matter of grant of bail.

9. The applicant then moved the Sessions Court and prayed for bail on several grounds including the alleged bias of the police officers; absence of corroboration; the prosecutrix being a so-called "call-girl"; absence of medical

evidence etc. The Sessions Court came to the conclusion that the applicant's story that his sub-ordinate head constable Shankar Rane had cooked up a false case against him was prima facie not acceptable. There was no reason why prosecutrix Reshma should fall a pray to the conspiracy, if any, by some police officers. There were statements of two lady police constables Surekha Kale and Sandhya Ahivale. The learned Sessions Judge, therefore, came to the conclusion that a prima facie case was made out against the applicant. He also came to the conclusion that when the applicant was on bail, granted by this Court, prior to its cancellation by the Supreme Court, the applicant had used his influence to win-over the two panch witnesses in the Citadel Hotel raid case and hence this was not a proper case for grant of bail. In the result, the application for bail was rejected on 30th March, 1993.

10. Shri Sabnis, the learned Counsel appearing on behalf of the applicant has raised the following contentions.

- i) The prosecution case is prima facie absurd and it has been fabricated by the persons who are inimical to the applicant.
- ii) The case of the prosecutrix has to be rejected on merits since there is gross delay on her part and there is no corroboration in the form of medical evidence and that, the prosecutrix is, after all a "call-girl".
- iii) The alleged threats to the witnesses are a totally fabricated story and the applicant has indulged in no such acts so as to dis-entitle him to bail.
- iv) The affidavit of A.C.P. Babar filed in this application contains several incorrect statements and is not worthy of any credence.
- v) This Court may impose such conditions as are necessary including the applicant's staying outside Maharashtra in the event of the bail being granted and finally.
- vi) The ad-interim order passed by this Court on 17th April 1993 in the present application virtually decides the matter finally and there is no fresh material so as to warrant a different view being taken.

11. As against this Shri Mirajkar for the State has contended that the allegations of an absurd case being fabricated against the applicant is totally mis-conceived and the case made out by the prosecution is the true version of what happened during the midnight between 21st and 22nd August 1992 and there is nothing absurd about the said story. He relies upon the withdrawal of the earlier Writ Petition No. 1532 of 1992 before the Division Bench where the applicant had made allegations against the officers and had alleged bias and vendetta and the applicant had also prayed for transfer of investigation which prayers did not find favour with the Division Bench resulting in the writ petition being withdrawn on 17th December 1992.

12. On the second contention raised by Shri Sabnis, Shri Mirajkar contends that

it is settled law that corroboration is not a must in every case of rape. He has invited my attention to the observations of the Supreme Court in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, when the Supreme Court was dealing with a similar case of the mis-use of authority by a police officer while dealing with a helpless girl in his custody. Allowing the appeal and setting aside the order of acquittal passed by this Court, the Supreme Court has sounded a caution against insisting upon corroboration in every case which may have the result of equating a woman who is a victim of the lust of someone with an accomplice and thereby insulting women-hood. Shri Mirajkar has also invited my attention to the observations of the Supreme Court in the case of State of Haryana Vs. Prem Chand and others, where an argument was advanced causing aspersions on the character of the prosecutrix who was said to be a woman of questionable character and easy virtue. That was also a case of rape. Shri Mirajkar, therefore, contended that despite the absence of medical evidence and despite prosecutrix Reshma being, what is called a "call-girl", her statement was worthy of credence in view of corroboration of as many as 4 police constables/head constables, namely, Head Constables Rane and Torne and Lady Police Constables Surekha Kale and Sandhya Ahivale. Shri Mirajkar also invited my attention to the observations of the Supreme Court in para 8 of its judgment in the case of State of Maharashtra and another Vs. Madhukar Narayan Mardikar, where the Supreme Court in para 8 at page 6 of the report has observed that merely because a woman is alleged to be of easy virtue, her evidence could not be thrown overboard. At the most the Court may be called upon to evaluate her evidence with caution.

13. On the question of delay on the part of the prosecutrix in lodging the complaint, Shri Mirajkar contended that it is true that she has not made an immediate complaint, but her statement shows that she was threatened by the applicant, who is not an ordinary citizen, but who is a police officer. In fact, the prosecutrix had gone back to Bangalore and this explains her mental frame and the delay in lodging the complaint. Shri Mirajkar again places reliance on the observations of the Supreme Court in Chandraprakash Jain's case and further contends that there is no motive whatsoever for this girl Reshma to implead the applicant falsely. She was not even an accused in the earlier C.R. No. 263 of 1992 in connection with the raid on Citadel Hotel. She was taken to the Vigilance Branch only for interrogation. There was, therefore, no reason why she should join hands with the police and go to the extent of impleading a police officer like the applicant falsely.

14. In reply to Shri Sabnis's criticism that witnesses have been forced to make various statements, Shri Mirajkar invited my attention to the statement of some witnesses to show the conduct of the applicant who was trying to tamper with the evidence. He invited my attention to the statement of Rehman Abdul Jabbar alias Pappu recorded on 18th November, 1992 and 1st January 1993 which showed that the applicant had administered threats to this witness. He further contends that after having obtained anticipatory bail from this Court on 20th

November, 1992 the applicant had immediately filed a Writ Petition No. 1532 of 1992 which was, however, withdrawn since the Division Bench was not inclined to admit it and another writ petition was filed by two panchas Abdul Aziz and Mohammed Gaus being Writ Petition No. 1576 of 1992 on 7th December 1992 at the behest of the applicant which also was withdrawn on 15th March 1993. Shri Mirajkar further contends that even when the matter was pending before the Supreme Court threats were administered to Rehman Abdul Jabbar alias Pappu as is evident from his statements recorded on 1st January 1993 and 1st February 1993.

15. On the next contention regarding the alleged incorrect statements in the affidavit of A.C.P. Babar filed in the present proceedings, Shri Mirajkar contended that it faithfully summarises the various proceedings adopted from time to time including the earlier proceedings in the Supreme Court as also two other writ petitions in this Court, namely, Writ Petition No. 1532 of 1992 and 1576 of 1992. Shri Mirajkar contends that the statements made by A.C.P. Babar in his affidavit in reply are supported by the material on record.

16. On the question of conditions suggested by Shri Sabnis, Shri Mirajkar contends that this is not at all a case for grant of bail and, therefore, there is no question of imposing conditions of the nature suggested. He contends that this case falls squarely u/s 437(1) of the Code of Criminal Procedure and there appears to be reasonable ground for believing that the applicant is guilty of offence punishable with imprisonment for life. He pointed out that in case of an offence punishable u/s 376(2)(a) where the police officer commits rape within the limits of the police station to which he is appointed or on a woman in his custody or in the custody of the police officer sub-ordinate to him, minimum sentence is 10 years and the sentence may extend to life term and the accused shall also be liable to fine. It is true that the proviso to sub-section (2) of section 376 contemplates, for adequate and special reasons to be mentioned in the judgment, imposing a sentence of imprisonment of less than 10 years. But Shri Mirajkar contends that in the event of the Court accepting the girl's version this is not a case for showing any leniency to the applicant. He, therefore, contends that there is no occasion to consider the conditions suggested by the applicant.

17. On the last contention raised on behalf of the applicant, Shri Mirajkar contends that having regard to the peculiar facts and circumstances of this case, no ad-interim order for bail should have been passed in the present case on the very first date of hearing i.e. 17th April 1993. He says that in fact the Public Prosecutor had applied for time on 17th April 1993 for filing a reply and there was not even a prayer for any interim relief much less an ad-interim relief. Shri Mirajkar contends that the only prayer in the bail application is for bail during the pendency and final disposal of the Sessions Case No. 186 of 1993. At any rate he contends that merely because the learned Judge has passed an ad-interim order pending admission that does not come in the way of my considering the merits of the matter, and passing an appropriate order.

18. Having heard the learned Counsel at some length and having perused the entire material that is placed before me, in the light of the decisions of the Supreme Court to which my attention has been invited, it is not possible to accept the contentions raised by Shri Sabnis. On the contrary, I am inclined to accept the contentions raised by Shri Mirajkar on behalf of the State. My reasons are as under :

19. The first contention that the prosecution case is absurd and has been fabricated by persons who are inimical to the applicant is devoid of merits. The applicant is an inspector of police and it is difficult to appreciate how prosecutrix Reshma would join hands with the subordinates of the applicant for the purpose of fabricating a false case against the applicant. As stated earlier, Reshma was not even arrested by the applicant in connection with the raid on Citadel hotel. She is not an accused in that case. She was alleged to be a "call-girl" and was merely called for interrogation and it was in that behalf that she was called to the room of the applicant. Head Constables Govind Torane and Shanker Rane have given their versions of what exactly transpired in the evening of 21st August 1992 and later on during the midnight between 21st and 22nd August 1992. Having perused the statements of these two head constables, I find nothing absurd or fabricated in their statements so as to justify the first criticism levelled by Shri Sabnis. The two lady constables Surekha Kale and Sandhya Ahivale have also substantially corroborated the version of prosecutrix Reshma and of the two head-constables Torane and Rane. I cannot be oblivious to the fact that the applicant had himself filed Writ Petition No. 1532 of 1992 where he had alleged bias and vendetta on the part of the investigating officers. This allegation was denied on affidavit filed on behalf of the State. Upon hearing the Counsel for the parties, the Division Bench of this Court was not impressed with the contentions raised by the applicant. Apart from the plea of quashing, even the plea for transfer of investigation from C.I.D. Bombay to C.I.D. Pune, did not find favour with the Division Bench. It is thus not possible to accept the first submission made by Shri Sabnis on behalf of the applicant.

20. On the second contention, Shri Mirajkar is right in his submission that the Supreme Court does not insist on corroboration in each and every case of rape. In fact, he has invited my attention to the case of the State of Maharashtra Vs. Chandraprakash Kewalchand Jain, where the Supreme Court was dealing with an appeal filed by the State against the order of acquittal of the sub-inspector of Police who was acquitted of the charge of section 376 I.P.C. by this Court. In para 17 the Supreme Court has observed thus at page 664 of the report.

"We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an

accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime."

In para 18 of the judgment, the Supreme Court dealt with the situation when the crime is committed by person in authority for example a police officer and answered the question as to whether the Court's approach should be the same as in other cases involving a private citizen and the Court observed as under :

"Notwithstanding this concern, if a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the Court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The Court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped."

With respect, the above observations are to be born in mind while considering the applicant's contentions particularly the second contention that there is no merit in the case of prosecutrix and her case has to be rejected since there is gross delay on her part and there is no corroboration in the form of medical evidence. Even the criticism against her evidence that she is a call girl will not be justified in the light of what the Supreme Court has stated in the case of State of Haryana Vs. Prem Chand and others, . In para 10 of the judgment at page 539 of the report of the Supreme Court has observed that the factors like character or reputation of the victim are wholly alien to the very scope and object of section 376 of I.P.C. and can never serve either as mitigating or extenuating circumstances for imposing the sub-minimum sentence with the aid of the proviso to section 376(2) of the I.P.C. Again in the case of State of Maharashtra and another v. Madhukar Narayan Mardikar, reported in 1991 Supreme Court Cases (Crim.)¹, also a case of rape by a police officer, the Supreme Court did not approve of the High Court's approach that since the victim was an un-chaste woman, it was not safe to rely upon her uncorroborated version. The Supreme Court observed that merely because the woman was of easy virtue, her evidence cannot be thrown overboard. The Supreme Court disagreed with the High Court and set aside the order of the High Court and restored the order of removal from service. Shri Mirajkar is, therefore, justified in placing reliance upon the observations of the Supreme Court in the above mentioned three decisions.

21. On the question of delay, on the part of the prosecutrix in lodging the complaint, I am inclined to accept the contention of Shri Mirajkar at this stage of the proceedings. The statement of the prosecutrix Reshma shows that she was threatened by the applicant who is not an ordinary citizen but who is the police

officer. Her statement further shows that she must have been in a state of emotional turmoil and psychological injury as observed by the Supreme Court in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, . If Reshma had any ulterior design in her mind to falsely implicate the applicant at the behest of his sub-ordinates, she would not have kept quiet for a long time. It is not unknown that in a case of rape the prosecutrix takes some time to come to the conclusion, of lodging a complaint. This would all the more be so in a case where an alleged call girl has to make a complaint against a police officer.

22. Coming to the third contention of the threats to the witness as being a totally fabricated story, I find no merit in the contentions raised on behalf of the applicant. In the first place, prosecutrix Reshma herself says in her statement that she was threatened. Bearing in mind what the Supreme Court has stated about the conduct of the police officer in such a situation in the case of State of Maharashtra v. Chandraprakash Kewalchand Jain, referred to above, I find nothing un-natural in the version of the prosecutrix that she was threatened by the applicant and that her silence for a considerable period was because of this. Even the statements of Rehman Abdul Jabbar alias Pappu, recorded repeatedly, clearly show that the applicant administered threats to this witness and this was during the period he was on bail granted by this Court on 20th November 1992 before the Supreme Court cancelled the bail on 12th February 1993. Shri Mirajkar also made a grievance that at the time of obtaining anticipatory bail from this Court on 20th November 1992, no doubt the applicant had assured this Court that he should co-operate with the investigation. However, he had kept Writ Petition No. 1532 of 1992 ready and that was filed on the same day, on which he obtained the anticipatory bail from this Court i.e. to say on 20th November 1992. He not only prayed for quashing of the charge but also prayed for transfer of investigation from C.I.D., Bombay to C.I.D. Pune. The Division Bench of this Court was not impressed by this petition which was, therefore, withdrawn on 17th December 1992. The applicant did not stop there. Another writ petition was filed apparently by two panchas, Abdul Aziz and Mohammed Gaus being Writ Petition No. 1576 of 1992 making grievance against certain police officers as to the manner in which the statements of panchas were recorded at the time of raid on Citadel hotel. It is of some significance that when this Writ Petition No. 1576 of 1992 was filed on 7th December 1992, the applicant was on bail. The State filed its affidavit-in reply denying the contentions raised by the two panchas. In the mean-while the Supreme Court cancelled the bail granted by this Court. The Supreme Court passed the order on 12th February 1993 and on 15th March, 1993 the two panchas withdrew the Writ Petition No. 1576 of 1992. At this stage, these factors are eloquent and cannot be lightly brushed aside. Shri Mirajkar is, therefore, justified in contending that there is substance in the allegation that the applicant has administered threats to different witnesses, some of whom are the witnesses in this case and others are witnesses in the case arising out of the raid on Citadel hotel. I thus find no merit in the third contention raised on behalf of the applicant.

23. There is no merit in the criticism that the affidavit filed in this case by A.C.P. Babar contains several mis-statements justifying rejection of the prosecution case at this stage. The affidavit sets out the background of the matter and the reasons why the ad-interim order granted by this Court on 17th April, 1993 was not challenged before the Supreme Court. It then sets out the developments leading to the filing and disposal of Writ Petition No. 1532 of 1992 which was withdrawn on 17th December 1992. It thereafter deals with Writ Petition No. 1576 of 1992 filed by the two panch witnesses in Citadel Hotel raid case and states that the said Writ Petition No. 1576 of 1992 had obviously been filed at the behest of the applicant. The learned Sessions Judge who has passed the impugned order refusing to grant bail in this case has also come to the same conclusion in para 23 of his order where he has observed that when the writ petition of the panch witness was pending in this Court, the present applicant was not arrested and that there was strong reason to believe that the applicant had used his influence to win-over the said witnesses for the purpose of nullifying their earlier statements. This shows the attitude of the applicant which is also borne out by the statements of prosecutrix Reshma and Rehman Abdul Jabbar alias Pappu in the present case. The affidavit of A.C.P. Babar filed in the present proceedings then deals with the tendency of the applicant to improperly influence the proceedings. I need say nothing except referring to the order of the Supreme Court which, though brief, is with respect very eloquent. I, therefore, find no merit in the criticism that on account of some incorrect statements in the affidavit of A.C.P. Babar the prosecution case is not worthy of any credence.

24. Coming to the contention of imposing conditions I do not think that this is a case where grant of bail would be justified. As rightly contended by Shri Mirajkar, the offence is punishable with a minimum sentence of 10 years and it may extend to life term if the accused is held guilty of an offence punishable u/s 376(2)(a) of the Code of Criminal Procedure. Having regard to the entire background of this matter, I do not think that this is a case for grant of bail. Indeed there appears to be reasonable ground for believing that the applicant is guilty of an offence punishable with imprisonment for life. Hence there is no need for considering the conditions to be imposed for grant of bail.

25. Coming to the last submission of Shri Sabnis it has to be stated merely for the purpose of being rejected. Merely because an ad-interim order of bail was passed on the first date of hearing when the State applied for time to file the reply, I do not think I am precluded from considering the merits of the matter. Shri Mirajkar is justified in his grievance that there was not even a prayer for interim relief much less any ad-interim relief and in the very nature of such a petition, granting such an ad-interim order would amount to virtually granting final relief to the applicant which was wholly uncalled for in the peculiar facts and circumstances of this case. I am, therefore, not at all impressed with this contention raised on behalf of the applicant.

26. In despair, Shri Sabnis sought to place reliance on the observations of the

Supreme Court in the case of Kishore Chand v. State of Himachal Pradesh, reported in 1990 C L J 2289 which observations appear in para 12 at page 2295 of the report. The Supreme Court had in that case, come to the conclusion that the Investigating Officer had taken the appellant a peon, the driver and the cleaner for ride and trampled upon their fundamental personal liberty and lugged them in the capital offence punishable u/s 302 of I.P.C. by freely fabricating evidence against the innocent. It was in this context that the Supreme Court sounded a caution that the liberty of the citizen was precious one guaranteed by Article 3 of the Universal Declaration of Human Rights and also Article 21 of the Constitution of India and its deprivation can be only in accordance with law. With respect, there can be no doubt about the proposition, but, in my view, the said observations have no application whatsoever in the facts of the present case.

27. As stated earlier, the applicant has been charged with an offence punishable u/s 376(2)(a) for which the minimum punishment is 10 years and the maximum is life term plus fine, subject however to adequate and special reasons justifying a lesser sentence than the minimum of 10 years. At this stage, I am not called upon to weigh the evidence and express any opinion on the merits of the matter. Since, however, the Counsel for the applicant took me through the statements of the witnesses I have made a brief reference to the said statements. Suffice it to say that, at this stage, there appears to be a reasonable ground for believing that the applicant is guilty of an offence punishable with imprisonment for life and hence, in any view, no case is made out for grant of bail. The application for bail is, therefore, rejected.

28. At this stage, Smt. Rao on behalf of the applicant prays for some time to surrender. In the view that I have taken, I would have normally been reluctant to grant any time to the applicant to surrender. However, Smt. Rao points out that the applicant is on bail pursuant to the ad-interim order passed by this Court on 17th April 1993. Shri Mirajkar contends that such an ad-interim order was wholly uncalled for and opposes the request for time to surrender in the peculiar facts and circumstances of this case. There is some substance in Shri Mirajkar's contention. However, since the applicant is desirous of approaching the Supreme Court, I am inclined to grant him time till Monday the 12th July 1993. Accordingly, the applicant is directed to surrender to the Crime Branch, Thane Police on Tuesday the 13th July 1993. It is, however, made clear that during this period the applicant will not enter the limits of Greater Bombay and will continue to stay at Thane and will report every day at the office of the Commissioner of Police, Thane.