

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.817 OF 2015

Akshay Shivaji Suryawanshi ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Aniket U. Nikam i/b V.R. Gaikwad for the Applicant
Ms.Veera Shinde, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 17, 2015**

P.C.:

1. This application has been moved for bail as the applicant/accused is facing charges under sections 376 and 323 of the Indian Penal Code and also under sections 3(a) and 4 of the Protection of Children from Sexual Offences Act, 2012 in C.R. No.146 of 2014 at Umbraj police station, Satara. The mother of the prosecutrix is the complainant in this case. The applicant/accused stays near the house of the prosecutrix. On 13.11.2014, when the daughter of the complainant did not return home in the evening, at about 5.30pm, the complainant and her husband started searching for her. They found their daughter coming out of a sugarcane field, followed by the applicant/accused. At that time, the prosecutrix was looking scared. After questioning her, she told them that at around 5.15pm, when she took the cattle for grazing, the applicant/accused arrived there and he

took her to the sugarcane field and there he assaulted her and raped her. Thereafter, the complaint was lodged on 14.11.2014. The prosecutrix was minor and of 13 years of age when the incident took place i.e., on 13.11.2014.

2. The learned Counsel for the applicant/accused has submitted that the applicant/accused is falsely implicated in the case. The applicant has not committed any offence. He relied on the spot panchanama which has taken place on 14.11.2014 between 10am to 10.30am. He submitted that if at all she was raped in the sugarcane field, the panchanama discloses that there was a crop standing 12' in height and the spot of rape, as alleged, was 110 metres inside the field from the road. If at all, the girl was dragged in the field, then she must have sustained abrasions or lacerations on her limbs. However, her medical examination report does not disclose so. Moreover, he relied on the clinical examination report of the girl. The report discloses that the prosecutrix was examined after 8 to 9 hours after the incident. If it was so, it would have been found in her medical examination. Some signs of sexual intercourse would have been found in her medical examination. However, the report discloses about no fresh sexual intercourse. Therefore, it appears that the applicant is falsely implicated and hence, he submitted that the bail application be granted.

3. The Investigating Officer is not present, though the matter was fixed today specifically. However, the papers of chargesheet are available and so the matter was argued by the learned Prosecutor. Learned Prosecutor has opposed the application. She relied on the medical certificate which indicates 'PV possible by two fingers'. She submitted that the statement of the girl recorded on 14.11.2014 and the statement of her mother disclose that the incident has taken place. She further submitted that the girl was a minor and only 13 years of age. Hence, bail should not be granted.

4. Perused the FIR, the medical reports and the statements of the girl. The prosecutrix was 13 years old at the time of the incident. She being a minor, her consent to sexual intercourse is immaterial, so, if at all there is such incident of sexual intercourse, with or without consent, it amounts to rape. As per the case of the prosecution, there was only one incident of forcible sexual intercourse on 13.11.2014 at around 5.30pm. The medical report discloses that she was examined after 8 to 9 hours and that there was no sign of fresh intercourse. The medical report shows that her vaginal swab was sent to C.A. and report states no signs of fresh intercourse and thus, it prima facie appears that the incident, as alleged on that day, appears to be doubtful. Therefore, though it is mentioned further that she appears to be habitual for the sexual intercourse, there is a possibility that there may be an incident of sexual intercourse in the

past, for which as per the case of the prosecution the present applicant is not responsible.

5. At this stage, as the particular incident appears to be doubtful, I grant bail on the following conditions:

- i) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.40,000/-, with one or two sureties in the like amount;
- ii) The applicant shall not tamper with the evidence;
- iii) The applicant shall not indulge into any kind of offence while on bail and he shall not stay in the village for a period of six months;
- iv) The applicant shall attend on all the Court dates.

6. Bail application is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)