

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

BAIL APPLICATION NO.2448 OF 2015

Girish Purushottam Gumaste

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Ms Jyotsna V. Walujkar for the Applicant.

Ms Veera Shinde, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 16th DECEMBER, 2015.

P. C. :

This is an application for bail filed by the aforesaid Applicant who is facing trial in Sessions Case No.194 of 2015 pending on the file of the Special Judge, Sessions Court, Sangli, for the offences punishable under sections 376, 354 A, 354 D, 341, 452 and 506 of the Indian Penal Code, 1860 and sections 3, 4, 9 and 10 of the Protection of Children from Sexual Offences Act, 2012.

2. The case of the prosecution in brief is that the Applicant, who is a neighbour of the victim had outraged the modesty of the victim and subjected her to rape on 5.8.2015. Upon being informed

about the said incident, the mother of the victim had lodged the FIR dated 7.8.2015. Pursuant to which Crime No.180 of 2015 came to be registered and upon completion of investigation, charge-sheet was filed and the case being sessions triable, was committed to the Court of Sessions, Sangli. The application for bail filed by the aforesaid Applicant before the Special Judge, came to be rejected vide order dated 23.10.2015. The Applicant has therefore, invoked powers of this Court under section 439 of the Criminal Procedure Code.

3. Ms Jyotsna Walujkar, the learned counsel for the Applicant has submitted that there is delay in filing the FIR. She has further submitted that though the victim was allegedly molested on 4.8.2015, no complaint was filed regarding the said incident. She has submitted that the house of the victim is situated in a thickly populated area and that the neighbours had not seen the Applicant entering the house and that they had not heard the victim crying for help. The medical evidence does not corroborate the statement of the victim. She has further stated that the Applicant is residing in the same locality since last several years and that it is not possible for the Applicant to commit such an offence. She has further submitted that the Applicant has been falsely implicated by the victim and her mother for the reasons best

known to them.

4. The learned APP submitted that the statement of the victim prima facie reveals that the Applicant had sexually abused the victim and the allegations levelled against the Applicant constitute an offence of rape as well as disclose an essential ingredient of the offence under the Protection of Children from the Sexual Offences Act. She has further submitted that the offence is of grave nature and as such the Applicant is not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State. The statement of the victim, who is a 14 year old girl and is a child within the meaning of section 2 (d) of the Protection of Children from Sexual Offences Act, prima facie reveals that the Applicant herein is the neighbour of the victim and he had outraged her modesty on 4.8.2015 and sexually abused her on 5.8.2015. The allegations made in the said statement prima facie constitute an offence of rape within the meaning of section 375 of the IPC. The statement of the witness Chaitrali also prima facie reveals that on the relevant date, she had seen that the victim was alone in the house. She had stated that on the same day at about 8.45 p.m. the

Applicant had enquired where the mother of the victim had gone and that she had told him that the mother of the victim had gone to the house of one Mayuri. Her statement further indicates that she had seen the Applicant in front of the house of the victim and at about 10.00 p.m. on the same day she had seen the victim while she was going to her grandmother and that the victim was frightened and was crying. When she asked the victim as to why she was scared, initially she declined to tell her but when she coaxed her, the victim told her that the Applicant had entered her house, pushed her on the bed and had sexually abused her. Said Chaitrali has stated that she had not disclosed the incident to the mother of the victim because of the strained relationship between her mother and the mother of the victim.

6. The statement as the victim and witness prima facie indicates that the applicant herein sexually abused, raped the victim. It is true that the medical certificate stated that there were no injuries on the genitals of the victim. It is, however, to be noted that the medical evidence is only corroborative piece of evidence and at this stage the statement of the victim cannot be disbelieved on the basis of the said medical certificate.

7. The material on record prima facie reveals that the

Applicant, who is 42 years of age was involved in committing rape on a minor, who is barely 14 years of age. The material on record prima facie discloses the essential ingredients of section 375 of the IPC and sections 3, 4, 9 and 10 of the Protection of Children from Sexual Offences Act, 2012. The offence is of a serious nature. The trial has not commenced. If released on bail, the possibility of the Applicant, who is neighbour of the victim, influencing the victim cannot be ruled out.

8. Considering the facts, the Applicant is not entitled for bail. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)