

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.137 OF 2015

Mangesh Mallesh Mhetre	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Anil Kamble, Advocate for the Applicant
Mr. Rajesh More, APP for the State.

CORAM : P.D. KODE, J.

DATE : JANUARY 21, 2015

P.C.

. Heard.

2. The prayer for bail made by the applicant charge sheeted by Kolsewadi police station, Kalyan for the commission of offences punishable under Sections 376, 452 and 506 of Indian Penal Code and Section 3 and 4 of Protection of Children from Sexual Offences Act, 2012 is objected by the learned APP on the ground that the material collected during the case of investigation reveals

that the applicant had ravished a minor girl of aged 17 years by giving threats of killing her mother. It is submitted that there is corroboration from the medical report to the tune of hymen of the girl being torn and thus the same supports the claim staked by the victim.

3. The learned counsel for the applicant has pressed the prayer for bail on the ground of the victim having levelled false allegations under the pressure of her mother. It is submitted that it reveals that age of the girl was 18 years. It is submitted that no other material of impeccable nature has been collected by the prosecution showing her age was below 18 years. It is submitted that certificate obtained from School can not be considered as primary evidence about the age of the girl. It is urged that even the statement of mother does not discloses the birth date of the girl.

4. It is urged that there is gross delay of two months in lodging the F.I.R. destroying the sting of the allegation. It is submitted that the statement of mother of the deceased does not disclose or even whispers that any point of time the applicant had threatened the mother. It is submitted that considering the material in proper perspective, the same reveals a case of consensual sexual relations. It is urged that at least the same does not denote that it was a case for the purpose of satisfying lust.

5. The perusal of the charge-sheet *prima facie* supports the submissions canvassed by the learned counsel for the applicant. The recital in the statement of the victim girl that at about 3.00 a.m. she opened the door which enabled the applicant to enter the house also supports the theory of consensual sex. Further it denotes of the delay being of 60 days in lodging the F.I.R. The

submissions canvassed that apart from the material revealing that it was a case of consensual sex, denotes that at least no case is made out for the offence committed for satisfying lust also cannot be said altogether devoid of merit Considering such character of the prosecution material, the prayer for bail deserves to be considered favourably as it is well known that it is easy to make the allegation of rape but it is difficult refute it.

6. Resultantly, the application is allowed.

7. The applicant is directed to be released on bail upon furnishing P.R Bond in sum of Rs. 50,000/- (Fifty Thousand) with one or two sureties to make up like amount and subject to the conditions after his release of the applicant,

(i) not entering the jurisdiction of Kolsewadi police station, Kalyan without permission of the trial Court.

(ii) informing his place of abode to the investigating officer and attending the local police station of the said area on every Monday in between 11.00 am to 1.00 pm for a period of one month and thereafter on every alternate Monday for a period of one month and thereafter on every first Monday of the month.

(iii) not indulging in any activity of coming in the vicinity of victim girl or her relatives or other prosecution witnesses and not indulging in any activity of tampering the prosecution evidence and/or and

(iv) not misusing the protection granted by this order for fleeing away or for any other oblique purpose.

Application stands disposed of.

(P.D. KODE, J.)