

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1331 OF 2015

Sandip Lahu Gavale	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mrs. A.M.Z. Ansari, for the Applicant.
Mr. S.S. Pednekar, APP for Respondent – State.
IO. Mr. M.N. Patil (PI), Wadi-Varhe police station, Nashik.

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

DATE: **AUGUST 03, 2015**

P.C.:

The application is moved for bail as the applicant/accused is facing charges for the offences punishable under Sections 376(D), 341 and 506 of the Indian Penal Code in C.R. No. 12 of 2015 registered with Wadi-Varhe police station, Nashik.

2. As per the case of the prosecution, the incident of gang rape has taken place on 6th February, 2015 after 7.30 p.m. when the prosecutrix was going along with her sister Sarla to a shop. The applicant/accused along with co-accused were chit-chatting at the corner of the road and then those three co-accused dragged the

prosecutrix behind her house and they took her at the hip of fodder. Then all the three co-accused raped the prosecutrix. The applicant/accused along with co-accused Shashikant hold the sister of the prosecutrix. After some time, the co-accused who raped the prosecutrix allowed her to go but they threatened her that she would not tell their names to anybody otherwise they would kill her. Her sister Sarla met her after some time and then they went home. Thereafter, the information was given to the police.

3. The learned counsel for the applicant/accused has submitted that the case of the prosecutrix is that the applicant/accused did not commit rape on her but he along with the other co-accused Sashikant hold her sister Sarla. Therefore at the most he has committed the offence punishable under Section 341 of the Indian Penal Code. The applicant is 20 years of age and is in prison since last 4-5 months. Therefore, he be released on bail. She relied on the medical certificate and submitted that it is in favour of the applicant/accused.

4. The learned prosecutor opposed the bail application. He

has submitted that it is the case of gang rape punishable under Section 376(G) of the Indian Penal Code where the punishment is provided for minimum 20 years or imprisonment for life. He relied on the statements of the prosecutrix and her sister Sarla recorded under Section 164 of the Code of Criminal Procedure.

5. Perused the first information report, the statements recorded under Section 164 of the Code of Criminal Procedure, the medical certificate of the prosecutrix and other documents. The prosecutrix at the relevant time of the incident was of 15 years of age and her sister Sarla was 12 years old. As per the case of the prosecution, the first information report given by the prosecutrix, did not attribute the role of actual sexual intercourse by the applicant/accused. The statement of sister Sarla discloses that the applicant along with co-accused Sashikant did not allow her to go anywhere. Perused the medical certificate. It did not disclose any clinical examination done of the prosecutrix. It appears that the medical officer did not conduct physical verification of the prosecutrix and opined about it. Be that as it may be, considering the role attributed to the applicant/accused, I am inclined to grant bail.

6. Hence, I grant bail as under:
- a) The bail application is allowed.
 - b) The applicant/accused be enlarged on bail upon furnishing P.R. Bond in the sum of Rs. 50,000/- (Fifty Thousand) with one or two surety/s in the like amount.
 - c) He shall not tamper with the evidence and shall not pressurize the complainant and other witnesses.
 - d) He shall not indulge into any criminal activity, while on bail.
 - e) He shall make himself available and attend all the Court dates regularly.
 - f) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.
7. A copy of this order is to be sent to the Civil Surgeon and Dr. M.C. Ugle, Gynaecologist.
8. The application stands disposed of on above terms.

(MRS.MRIDULA BHATKAR, J.)