

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1716 OF 2015

Mitra Prasad @ Govind Shivilal
Bhurtel

...

Applicant

Vs.

The State of Maharashtra

...

Respondent

Mr. Rajendra Sorankar, Adv. for the applicant.

Mr. S.S. Pednekar, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.

DATE : 15th December, 2015.

P.C. :

1. This is an application for bail filed by the aforesaid applicant who is facing trial in Special Sessions Case No.125 of 2014 pending before the Special Sessions Judge, Pune. The case arises out of C.R.No.37 of 2014 registered at Lonavla City Police Station for the offences punishable under Sections 376(2) (i) and under Section 3 read with 4, 5 and 6 of Protection of Child from Sexual Offence Act, 2012.

2. The case of the prosecution in brief is that, the applicant herein has committed rape on a minor girl. The applicant was arrested on 2nd March, 2015. The application for bail filed by the applicant has been rejected by the learned Special Judge, Pune by an

order dated 29th September, 2014. The applicant has therefore, filed this present application before this Court under Section 439 of Cr.P.C.

3. Mr. Sorankar, the learned counsel for the applicant has submitted that the FIR was lodged almost a month after the incident. The victim was on the verge of attaining majority and that the act was consensual. He has further submitted that the fact that the applicant is a native of Nepal cannot be a ground for rejection of bail and that his presence can be secured by imposing stringent conditions.

4. Mr. Pednekar, the learned APP for the State has submitted that the offence is of serious nature. He has further submitted that the applicant is a resident of Nepal and there are chances of his absconding and tampering the trial.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The records prima facie reveal that the victim is below 18 years of age and is a child within the meaning of 2 (d) of POCSO Act, 2012. The statement of the victim prima facie reveals that the applicant had told her that he would marry her and had told her to leave her house and

to accompany him to Delhi. She has stated that the applicant had sexual intercourse with her.

6. As stated earlier the victim is below 18 years of age, therefore, her consent is immaterial. The records further reveal that the applicant is a married man with a child and as such could not have married the victim. The material on record thus indicates that the applicant had induced the victim to have physical relation with her on false promise of marriage. Hence even otherwise, the consent, which is based on misconception of fact would not be a consent in terms of provisions of Section 90 of IPC. The applicant is a native of Nepal. Considering the gravity of offence, the possibility of the applicant absconding cannot be ruled out. Hence the release of the applicant, at this stage can hamper the trial.

7. Under these circumstances, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)