

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.2546 OF 2014

Dilip Ramsharan Varma ... Applicant
Vs.
The State of Maharashtra Respondent

Mr. S.G. Rajput for the Applicant.
Mr. Y.M. Nakhwa, APP, for the Respondent-State.

CORAM: P.D. KODE, J.

DATED: JANUARY 12, 2015.

PC:

1. Issue notice before admission. Learned APP appears, waiving service of notice for the Respondent-State and ready to argue the matter on the basis of the charge-sheet.

2. By this application the Applicant-brother charge-sheeted for commission of offence under section 376 (2) (f) and 354 B of the IPC and under sections 6, 8 and 10 of the Protection of Children From Sexual Offences Act, 2012, has prayed for bail. The Applicant is charge-sheeted for committing such offences by Wadala T.T. Police Station on the accusation that since last two years from the date of filing of FIR by victim sister on 18.3.2013 the Applicant-brother has been repeatedly ravishing her. The perusal of the FIR reveals in detail the description of

the act committed by the Applicant since the victim was of the age 13 years. Amongst others it also reveals that the victim has not reported the matter to anybody as her father was not her house and there was no elderly person present in house.

3. Mr. Rajput, learned counsel for the Applicant firstly submitted that the Applicant has been falsely implicated and the said falsity is apparent from the fact that the matters from spot panchanama repels the claim of the victim girl that after ravishing her the Applicant used to go and sleep at *Potmala*. It is submitted that spot panchanama does not reveal that there is no potmala for the said room.

4. Now considering the spot panchanama and the purpose for which it was drawn i.e. recording of situation prevailing the scene of offence and admittedly the offence being committed at ground floor, it is difficult to accept that merely because there is no mentioning of Potmala in spot panchanama it would lead to the conclusion as canvassed.

5. Nextly, it is submitted that the papers of investigation reveals that clothes of the victim girl were seized. It is submitted that however, no C.A. report has been furnished alongwith charge-sheet. It is urged that non filing of C.A. report indicates that the matters therein would be adverse to the prosecution. It is difficult to accept the said submission as the accusation is for having ravished the victim girl

repeatedly for a period of about two years. Having regard to it, it is difficult to accept that merely because no further material is found during the C.A. examination it will lead to the conclusion that the Applicant is falsely implicated. In the same context it can be added that by plethora of decisions of the Apex Court it is now well settled that in any such cases if the evidence of the victim is found to be credit worthy then same is not liable to be discarded for want of corroboration from other evidence to her claim.

6. Nextly, by drawing attention to the medical certificate it was submitted that same is also does not support prosecution case. The perusal of medical certificate amongst other reveals that hymen of the girl being torn. The said fact considered in the light of the accusation made, it is difficult to accept that same is negative or does not support prosecution case. Lastly, it was contended that statement of the father of the victim girl reveals that there is a dispute in between himself and his wife and his wife is interested in taking the custody of the said victim girl and also of her sister. It is submitted that in order to bolster up the said claim, the victim girl at the behest of her mother has falsely implicated the Applicant.

7. Perusal of the statement no doubt supports submission to the extent of there being a dispute in between the couple. However

without existence of any other material supporting relevant submission would amount to making insult to noble relationships in between brother and sister. Prima facie it is difficult to accept that any sister of such age would go to the extent of falsely implicating her brother. Thus, apparently there is no merits in the prayer for bail for such offence of very serious nature.

8. The application accordingly, stands rejected.

(P.D. KODE, J.)