

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 745 OF 2016

Krishna Raj Baba alias Brijbhushan
Krishna Muni Gurjar,
Age 38 years, Occu.: Agri
R/o Panchaleshwar,
Tq. Georai, District : Beed .. Applicant

Vs.

The State of Maharashtra
Through Police Station,
Chaklamba, District Beed .. Respondent

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Mr. N.S. Ghanekar, Advocate for the applicant
Mr. A.R. Borulkar, APP for the respondent-State

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CORAM : M.T. JOSHI, J.

DATED : 10/03/2016

ORAL ORDER :

Heard both sides.

2. The present applicant, who is arrested by Chaklamba Police Station, Dist. Beed in Crime no. A-70 of 2015 for the offences punishable under section 376 of the Indian Penal Code and under section 3-A, 4, 5, 6 of the Protection of Children From Sexual

Offences Act, is praying for his release on bail.

3. The applicant was arrested on 08/09/2015. The chargesheet is now filed and the case is also committed being Special Case No. 52 of 2015.

4. The complaint of the father of the victim would show that the present applicant is operating one ashram and giving shelter to various orphan or poor children. The complainant's two daughters including the victim were admitted to the said ashram.

. The present complaint is regarding the eldest of the daughter/victim, who, according to the medical examination carried during investigation, is above 17 years old.

. According to the complainant, on 24/08/2015, he went to meet his daughter at the ashram. At that time, the victim was taken away by the applicant to one Dr. Baglane at the district

place. The complainant therefore met the applicant and his daughter in the midway at the bus stand. At that time, he found that the victim was suffering from certain mental illness. She embraced the complainant and asked him to have certain food. The complainant enquired with the present applicant regarding the illness and also questioned as to why he was not informed. Upon that, the complainant told that she was being given treatment for a period of three months. When the complainant showed his readiness to take away the child, the applicant refused for the same. However, after 2-3 days, the complainant again went to the ashram. At that time also, the applicant did not give proper answer. The victim however again embraced the complainant and asked him to take her away to the house.

. In the circumstances, the victim was brought to his house. She was however acting like a mentally ill child. Therefore, the complainant took her to one Dr. Mr. Badjate. Ultimately, on the next

day, the step mother of the victim noticed burn injuries on the hand and knee of the victim. When the step mother further made enquiry with the victim, she told that she was subjected to forcible sexual intercourse.

. In the circumstances, the victim was admitted to the civil hospital on 07/09/2015 and the complaint came to be filed.

5. The medical examination of the complainant at the civil hospital would show that she is now above 17 years of age. There was old burn injury on her left wrist. Her hymen had old tear.

6. Mr. Ghanekar, learned counsel for the applicant submits that the statements of the inmates recorded by the Investigating Officer as well as even the statement of the younger sister of the victim, who is still in the ashram, would show that there was no ill-treatment or any other physical assault against the victim. Even till today, the

statement of the victim is not recorded by the Investigating Officer as against the statement recorded in the FIR that the victim has made a statement to her step mother that forcible sexual intercourse was committed against her. He submitted that the applicant being a baba, he is made the victim of the circumstances and in the circumstances, submitting that the investigation is complete, the applicant be released on bail.

7. Learned A.P.P. opposed the application. He submits that the medical examination of the applicant would show that the applicant is capable to have sexual intercourse and that on his external genitals i.e. penis and gland, visible marks of old injuries were seen. He further submitted that since the victim is suffering from psychosis, as can be found from the medical examination, she is unable to make any statement and, therefore, the Investigating Officer has not recorded her statement.

8. Considering all the facts on record, without making any comments on the issue, as to whether the victim could have made statement to her step mother and considering the fact that now the investigation is complete and the trial may take its own time, the present applicant can very well be released on bail on certain conditions.

9. Hence, the following order:-

I) The Application is allowed.

II) The applicant be released on bail in Crime no. A-70 of 2015 registered with Chaklamba Police Station, Dist. Beed for the offences punishable under section 376 of the Indian Penal Code and under section 3-A, 4, 5, 6 of the Protection of Children From Sexual Offences Act, upon his executing P.R. bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) and also upon furnishing surety in the like amount.

III) The applicant shall not in any way attempt

to influence any of the prosecution witnesses in any manner.

10. Application stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/-