

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6363 OF 2015 IN
CRIMINAL APPEAL NO.889 OF 2015

Bhagwan s/o Laxman Rakshe ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri A.S. Shelke, Advocate for applicant
Shri P.N. Kutti, A.P.P. for State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 7th April, 2016.

ORAL ORDER :

1. Heard counsel for the applicant - original accused No.1 and learned A.P.P. for the State. Perused record and judgment of the trial Court.

2. It is stated on behalf of the applicant - accused that, in this matter, regarding the age of the prosecutrix, there were different versions. As per the evidence of the doctor, on the

basis of report of Radiologist, the age was stated to be 12 to 14 years at the time of incident, which happened on 2.5.2013. It is stated that, in the school record, the age was mentioned as 5.6.1997. The entry was taken in the school record on the basis of the entry in earlier school. The record of the earlier school was not called. The prosecutrix as such, stated her date of birth as 6.5.1997. Thus, according to counsel, the evidence in this regard was not consistent.

3. It is stated that, the prosecutrix was with another person Shital, who was getting married at Kapildhar. It is the case of prosecution that on 2.5.2013, she was seen at the marriage venue till about 4.00 p.m. and then she went missing. Earlier report was filed by her mother P.W.2 on 3.5.2013, which was a missing report not expressing doubts against anybody in particular. On 6.5.2013, another complaint was filed, which claimed that the accused was also not to be seen in the village and thus, a suspicion was expressed against the accused. It is stated that, later on, on 14.5.2013, the accused and the prosecutrix were found at Tembhurni on Solapur-Pandharpur Highway when they were sitting in an Omni Car. The counsel stated that, the medical examination of the prosecutrix was done

on 15.5.2013 and her statement was recorded by the police on 15.5.2013. As per her statement to the police, in fact, she had called the accused and she had on her own gone with the accused as she had liking for the accused and they wanted to get married, but unfortunately they are of different caste. It is stated that, later on, in evidence, the victim - prosecutrix resiled from her statement to the police given on 15.5.2013. It is stated that, the trial Court took note of the various contradictions and omissions in the evidence of prosecutrix, but still relied on her evidence to convict the accused.

4. The counsel submitted that, the applicant - accused has a very good case as there was evidence to show that the prosecutrix was actually taken by Dnyaneshwar Kamble and accused No.2 Gavhane from the spot, but the charge of enticement has been placed against the present applicant - accused No.1. It is stated that, accused was a young person of 22 years at the time of incident and thus, bail may be approved.

5. Against this, the learned A.P.P. submitted that, the prosecutrix in any case was below 18 years of age when she was kidnapped and the offence of rape took place. According to the

learned A.P.P., the accused, looking to the nature of the offence and the fact that the accused was in custody even during the course of trial and has not been convicted, the bail may not be approved.

6. Even if it was to be said that the prosecutrix consented to going with the accused and to intercourse, still the evidence prima facie shows that she was below 18 years of age when she was kidnapped. The applicant was not granted bail during the pendency of the trial and now there is a judgment of conviction. Looking to these aspects, it would be more appropriate to fix the appeal itself for final hearing than granting bail in the matter. The grounds raised by the learned counsel for the applicant can be considered and decided at that time.

7. For above reasons, the application for bail is rejected.

(A.I.S. CHEEMA, J.)