

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 628 OF 2016

Ravi Gangadhar Dhole

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Yogesh Katire i/b Mr. Sanjay P. Shinde Advocate for Applicant.
Mr. S. H. Yadav APP for the State.
Mr. H. D. Raut, P.S.I. Sarkarwada Police Station,
Nashik City.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 25, 2016.

PC :

1) Heard. This is an application under Section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested in crime no. 274 of 2015 registered at Sarkarwada police station for offences punishable under section 363, 366 (A), 376 of the Indian Penal Code and section 4 of Protection of Children from Sexual Offences Act, 2012. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 16/08/2015, one Sushila Pawar lodged a missing report in respect of her daughter namely Ms. 'X'. That she

ism

had specifically stated that on 16/08/2015, at about 1.00 p.m. she had dropped her daughter at C.B.S. bus stand to go to Borgad. According to her, her daughter was abducted by someone. On the basis of her report, crime no. 274 of 2015 was registered against unknown person for offence punishable under section 363 of the Indian Penal Code. On 18/08/2015, the supplementary statement of Sushila Pawar was recorded. She informed the police that on 17/08/2015, her daughter had called upon her on a telephone and had informed her that on 16/08/2015, in the afternoon, she was to reach to her maternal aunt's house. The bus would not stop at Borgad and therefore, she had alighted from the said bus. She called upon Sandeep from the coin box. He asked her to come to Satpur police station. She went to Garware point. He had met her along with his friend. Thereafter, he had taken her in his car. After his friend has departed, he had forcibly ravished her. In the meanwhile, he had learnt that her mother had lodged a missing report and therefore he had dropped her on the way back to her house.

3) On 18/08/2015, the statement of the survivor was recorded. She informed the police that she had met the Applicant when she had been to his house along with her mother. That a person called Sandeep had called her on

the cellphone and had referred to one Kapil as his friend. That the Applicant who has posed as Sandeep had followed her to school. She had refused to talk to him and therefore, he had questioned her about the same. It is alleged that the victim had left her house along with her mother who had dropped her at C.B.S. stand in a bus which was boarded to Nashik Peth. She had alighted from the said bus and had called upon Sandeep from a coin box. They had met. They have been to a restaurant and had snacks. That she had insisted upon him to let her go home and he had taken disadvantage of her acquaintance and had ravished her on the way.

4) The learned counsel for the Applicant submits that in fact, it was the victim who had called upon the Applicant. That they had taken snacks together in a restaurant, that she had not made any attempt to rescue herself from the clutches of the Applicant. According to the learned counsel for the Applicant, it is a case of a consensual sex and therefore, section 376 of the Indian Penal Code or the provisions of POCSO will not be attracted.

5) The learned APP submits that on the day of the incident, the age of the victim was 14 years and 4 months as per the school leaving certificate.

6) In view of this, consent, if any, cannot be taken into consideration at

this stage and it would be a matter of appreciation of evidence adduced by the prosecution at the time of trial. It appears that the victim had called upon the Applicant as a friend. However, calling upon him to meet her cannot be taken as a consent for having sexual intercourse. Considering the gravity of offence, the nature of allegations and the age of the victim, the Applicant does not deserve grant of bail.

7) However, the trial is expedited. The learned Sessions Judge shall make an endeavour to conclude the recording of the evidence within 9 months from the date of framing of charge.

8) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)