

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 846 OF 2016

Prashant Shankar Jagtap

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Vaibhav R. Gaikwad Advocate for Applicant.

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

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 22, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein has been charge-sheeted in crime no. 91 of 2015 for offence punishable under section 376 (1), 366 (A) and Sections 8, 4 & 12 of the Protection of Children from Sexual Offences Act, 2012.

2) On 28/07/2015, victim had lodged a report at Wai Police Station alleging therein that present Applicant happens to be a friend of her cousin namely Mayur More. That they got acquainted with each other. According to the victim on 07/03/2015, while she was returning home, after appearing for her 10th standard examination, on the way, she met the present Applicant who had offered to drop her home. She had boarded his motorcycle. Instead of

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taking her home, he had stopped the vehicle on the way and there he had ravished her. She has stated that he had dropped her near Vathar Phata. Thereafter, after 8 – 10 days, at about 12.30 p.m., present Applicant had visited her house. Her sister Shubhangi was sleeping in the hall. The victim had returned home. Applicant again had sexual intercourse with her. One month thereafter, he had indulged into the same act. She was scared of her parents and had therefore, had not informed about the incident to anybody. A fortnight thereafter, she has visited her sister Ashwini's house at village Khed. After noticing the change in her physical appearance, her brother-in-law had enquired with her. At that time, the complainant had said that there is no problem since 4 months. She was taken for undergoing a test of ultra sonography and it was revealed that she was carrying pregnancy of 22 weeks.

3) Thereafter, the incident was disclosed to her parents and having learnt the involvement of the present Applicant, F.I.R. was lodged. The copy of the F.I.R. would shows that the parents of the victim had accompanied her to the police station. Police officer had also obtained the signatures of her parents on the F.I.R.

4) The learned counsel for the Applicant submits that according to the

victim, the incident is dated 07/03/2015 and on 28/07/2015, victim was carrying pregnancy of almost 6 months.

5) The learned counsel for the Applicant submits that there is a delay in lodging the F.I.R. The victim was a college going student and had maintained silence for almost 6 months. According to the learned counsel, on that ground alone, Applicant deserves to be enlarged on bail.

6) Upon perusal of the papers of investigation, it appears that on the date of medical examination, the victim was 15 years, 7 months old. The case history was recorded by the doctor. The case history given by the victim to the doctor reads as follows:

“On 07/03/2015, at 2.30 p.m., alleged history of sexual contact with consent once and one more time but exact date and time not known at home Shendurjane”.

7) It appears that the victim had attained the age of understanding. It is true that the statutory requirement is that the consent of the victim below 16 years of age cannot be taken into consideration.

8) Section 375 of the Indian Penal Code reads as follows.

“375. Rape – A man is said to commit “rape” if he-

(a) penetrates his penis, to any extent, into the vagina, mouth urethra

or anus of a woman or makes her to do so with him or any other person;
or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-

First - Against her will.

Secondly - Without her consent.

Thirdly - With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under eighteen years of age.

Seventhly - When she is unable to communicate consent.

Explanation 1 - For the purposes of this section, “vagina” shall also include labia majora

Explanation 2 - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1 - A medical procedure or intervention shall not constitute rape.

Exception 2 - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

9) However, in the present case, the very fact that the victim had disclosed to the doctor that it was with consent, speaks volumes for itself. Moreover, she had disclosed to her brother-in-law that she had no problems since 4 months. That just carrying of pregnancy for about 6 months would show that the victim must not have given consent, but must have succumbed to the request of the applicant in the state of infatuation.

10) Hence, Applicant deserves to be enlarged on bail, more particularly because the charge-sheet is filed. However, it is made clear that observations

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made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount.
- (iii) Applicant shall not reside in Taluka Wai, till the conclusion of the trial.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)