

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1015 OF 2016

Vinod Eknath Mali	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Mahendra N.Sandhyanshiv, Advocate for the applicant.
Ms. Veera Shinde, APP., for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 15th November, 2016.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 20.1.2016 in Crime No.337 of 2015 registered at Malegaon Taluka Police Station, District Nashik. The investigation is completed and charge-sheet is filed on 16.4.2016. The applicant has been charge-sheeted for the offences punishable under Sections 376(1), 377 and 120B of the Indian Pena Code as well as under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. The parents of the applicant have also been charge-sheeted for the said offences. However, they have been enlarged on bail.

2. It is the case of the prosecution that the prosecutrix filed a complaint before the Addl. Sessions Judge at Nashik on 3.12.2015 alleging therein that she does not have parents. She has one elder brother and that she was residing with her grandmother. It is alleged that the applicant is a close relative of the complainant. For almost one year prior to the filing of the complaint, the applicant and his parents were insisting upon the complainant to get married to the applicant. According to her, she was a minor. That the parents of the applicant were coercing her to have sexual intercourse with the applicant and that she had sexual intercourse with the applicant against her will. That she had conceived pregnancy. According to the complainant, she has no parents and, therefore, she had no support. Moreover, the applicant had allegedly threatened her of dire consequences and therefore, she had not lodged the complaint. According to her, when she was pregnant of 7 months, her grandmother had realized changes in her physical constitution and therefore had enquired with her. Her grandmother had insisted upon the applicant to get married to her and that the applicant and his parents had turned down the proposal and had further threatened her of dire consequences. According to the complainant, on 21.11.2015, the applicant had asked her to abort the pregnancy and she denied the same. According to the complainant, she had approached the police station i.e. the

Addl. Superintendent of Police on 21.11.2015 and thereafter had sent her report by registered post on 24.11.2015.

3. The learned Addl. Sessions Judge had perused the complaint and the Sonography report which indicated that the complainant was pregnant. The learned Sessions Judge had passed orders under Section 156(3) of Cr.P.C. Pursuant to the said directions, the offence was registered on 9.12.2015.

4. Perused the papers of investigation. The complainant had approached the Primary Health Centre at Taluka Malegaon on 28.4.2015 and her name was registered as a pregnant woman. Her name in the certificate shows 'Mrs. X wife of Vinod Mali' i.e. the preset applicant.

5. The learned counsel for the applicant has drawn attention of this Court to the fact that on 4.9.2015, the complainant had got married to Dattu Pimpalse. That on 24.9.2015, the complainant was examined at Jijamata Diagnostic Centre at Malegaon, where her name is shown as 'Rani Wagh'. The learned counsel for the applicant rightly submits that the complainant got married on 4.9.2015. She was already pregnant.

According to the learned counsel, in all probabilities, it was revealed after marriage that she was pregnant and therefore she has filed a complaint. The learned counsel further submits that it cannot be denied that the complainant and the applicant are close relatives. Consensual sex cannot be ruled out. That it is only after 7 months of pregnancy that the complaint is filed. The medical certificates show the name of the complainant differently at different stages.

6. The learned APP submits that in fact, no report was filed at the police station before filing of the complaint but after filing of the complaint, a letter was sent by registered post. After registration of offence, the complainant was medically examined at that stage she had given the name of her father. She has not mentioned that she is married. She was examined on 10.12.2015. Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that it is a fit case for granting bail. It is true that in cases in offences under Section 376 of IPC, the delay in lodging the FIR may not be fatal in all cases. However, in the present case, the facts would clearly indicate that they were relatives. The complainant had got married in the month of September, 2015. She was examined in the month of September

2016. At that time, she was pregnant of almost 27 weeks. Her name is shown differently. Hence, the applicant deserves to be enlarged on bail.

7. The observations made hereinabove are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.50,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not approach the complainant and shall not visit Village Zodge till the conclusion of trial.

The application is allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)