

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.1133 OF 2016

Mahesh Ambadas Avhad ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.K.H.Holambe Patil, Advocate for the Applicant.

Mrs.Rutuja Ambekar, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 20th JULY 2016.

P.C.

1 Applicant involved in Crime No.26 of 2016 registered by Mulund Police Station on 14/01/2016 for the offences punishable under Sections 376(2)(I)(J)(N), 506 of the Indian Penal Code and Sections 6,4,8 and 10 of the Protection of Children from Sexual Offences Act, 2012. has applied for grant of bail.

2 Heard learned counsel for both the sides. The learned counsel for the applicant has submitted that investigation in this case is complete and charge-sheet is already filed in the Court. He by referring the documents filed with the application, forming part

of charge-sheet has submitted that from the statement of prosecutrix as well as all other witnesses, no provision of Section 6 and 4 of the Protection of Children from Sexual Offences Act can said to be attracted, but Section 8 and 10 of the said Act only can be attracted and Section 8 is punishable for imprisonment for a period not less than three years, which may be extended to five years, while Section 10 is punishable for imprisonment which shall not be less than five years, but may extend to seven years and has, thus, sought bail on this count.

It is further submitted, that as from the statements of prosecutrix and from medical evidence, nothing is on record to establish penetration in the course of alleged incident, no offence punishable under Section 376 of the Indian Penal Code is stated to be attracted. It is therefore, prayed that application be allowed.

3 I have perused the charge-sheet. It appears that offence came to be registered on 14/01/2016 on the strength of report by mother of prosecutrix, wherein she has stated that on 12/01/2016, as informed by prosecutrix, she was called by her class teacher in the school, as the minor girl has informed her class teacher of involvement of applicant, by sexually assaulting her. Accordingly, complainant met the class teacher, who informed her that on the previous day, while there was a lecture on 'sex education', on the subject 'Good touch' and Bad touch', prosecutrix had informed her of applicant sexually assaulting her since five

months prior to that date by calling her in his house in the absence of other family members and about his visit to her home when she was alone in her house and has indulged into sexual act.

Complainant thereafter waited for her husband to come home, who arrived in the late hours on 13/01/2016 and thus after informing him about said fact on 14/01/2016 lodged report, upon which offence, as aforesaid, came to be registered.

4 From further contents of report it reveals that, in spite of prosecutrix having been subjected to sexual assault for a period of about five months, why she did not disclose said fact earlier, upon which prosecutrix stated that as applicant had extended threat to her to kill, in the event of her disclosing said fact to anyone in the house, she remained silent.

5 Last paragraph of FIR further establishes involvement of applicant and in fact in an aggravated form of offence of rape, as from contents of said paragraph it is noted that in the presence of Nirmala, Surekha Reddi, Jaya Potraj, prosecutrix made further statement that applicant has also sexually assaulted another minor girl, who is grand-daughter of Nirmala Sanghalli. On inquiring with said minor girl, she too implicated applicant to have assaulted her since four to five months by calling her in his house and on occasion visiting her house in absence of other family members.

6 On reporting the incident, both the girls were referred for medical examination on the following day. On perusal of medical certificate, it is certified that through there are no injuries found on the person of prosecutrix girls, from the nature of assault and history given, possibility of sexual assault cannot be ruled out. Above medical evidence does *prima facie* corroborate the version of both the prosecutrix girls on record, whose statements are recorded under Section 164 of the Code of Criminal Procedure and the contents of FIR.

7 On perusal of statements of Nirmala Sanghalli, Surekha Reddi and Jaya Potraj and Sweta-class teacher, they further establishes the involvement of applicant in crime.

8 Having considering involvement of applicant as above involving two minor girls aged about 11 years and 12 years respectively, application is not liable to be allowed.

9 Similarly, considering the age of both the minor girls, I do not find any substance in the case of the applicant that there is no mention of penetration either by the prosecutrix or in the report or medical report in view of the fact that to constitute offence of rape, it is not necessary that there should be complete penetration with emission of semen and rupture of hymen and

even on attempt of penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of the Indian Penal Code.

10 In that view of the matter, application is rejected.

11 At this state, the learned counsel for the applicant prays for issuing necessary direction to expedite the trial. It is informed by the learned Additional Public Prosecutor that charges are framed in the crimes in which charge-sheet are filed in 2013-14. Charge-sheet in the present crime is filed in the year 2016. In the circumstances, trial Court is requested to expedite the trial and to make an endeavour to complete the same within one year from the date of framing charge.

12 Registrar (Judicial) to communicate the order to concerned Court.

(P. N. DESHMUKH J.)