

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1362 OF 2016

Shubham Dattatray Netake

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Santosh S. Musale Advocate for Applicant.

Mr. Balwant Salunkhe for Intervener

Mr. S. H. Yadav APP for the State.

Mr. Gajanan Muluk, A.S.I., Khed Police
Station, Pune Gramin.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 23, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 106 of 2015 registered at Khed Police Station for offence punishable under section 354 of the Indian Penal Code and Sections 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2) On August 19, 2016, when the matter had come up for hearing, the learned counsel for the Applicant had made a statement that the parties are in the process of exploring the possibility of amicable settlement and that the

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complainant desires to file an affidavit to that effect. Taking into consideration the said submission, the matter was adjourned. The Applicant has arraigned original Respondent no. 2. Today, the father of Respondent no. 2 has filed an affidavit. Affidavit is taken on record and marked as article 'X' for the purpose of identification. The father of the Respondent no. 2 is present before the Court. It is contended in the affidavit as follows:

“3. That the applicant Shubham Dattatray Netake and prosecutrix are step-cousin. And the incident was narrated to me by my daughter i.e. prosecutrix and same was misunderstood by me. At the relevant time there was dispute regarding ancestral property between my family and applicant's father family.

4. That reasonable time has been passed and there is amicable settlement arose between these two families. And all misunderstanding are cleared and there is no any grievance against the present applicant as well as against his family”.

3) This Court has personally enquired with the father of the Respondent no. 2 and questioned him as to why he should not be prosecuted under Section 192 of the Indian Penal Code and punished under Section 193 of the Indian Penal Code. The father of the complainant submits that he does not understand English and therefore, he is not aware of the contents of the

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affidavit. Upon personal enquiry, the father of Respondent no. 2 has stated that in fact, the incident has occurred as narrated by his daughter, however, only to secure the future of his daughter and to save her from any danger to her life at the hands of the Applicant and to save her reputation, he has filed the present affidavit.

4) The learned counsel for the Applicant had submitted that the father of the Applicant and the father of the complainant are step brothers. In the affidavit, it is stated that father of the complainant and the Applicant are step-cousin, whereas according to the Complainant, the father of the Applicant and the father of the Complainant are first paternal cousins.

5) It is clear that the learned counsel for the Applicant as well as the learned counsel for the Complainant have not really taken instructions from the parties concerned.

6) It is the case of the prosecution that on 11/04/2015, the victim who is hardly 17 years and 9 months old, has reported to the police station that on 11/04/2015 at about 3.30 p.m., she was proceeding towards the public toilet, at that time, the person named Shubham Netake had caught hold of her hand and had asked her to accompany him. She had requested him to let her free.

Thereafter, he had touched her inappropriately on the public road and had outraged her modesty. She, with great efforts had rescued herself and had rushed home. She had narrated the incident to her parents and thereafter, along with her parents, she had been to the police station and lodged report.

7) There is no question of misunderstanding the narration of the daughter, according to the father of Respondent no. 2. The safety and security of the girls in public places is at stake and it would give a wrong signal, if the Complainant is allowed to settle such disputes and falsify the narration or the allegations made by the victim. The very fact that she is being falsified by her own father, would make her look at herself in shame and anguish. It is in these circumstances that affidavit filed by the Complainant cannot be taken into consideration. It is clear case of tampering of evidence at the stage of pre-arrest bail which would spell futility of filing of charge-sheet or the trial.

8) In view of the above circumstances, the Applicant herein does not deserve to be granted pre-arrest bail, which is a discretionary relief.

9) Father of the complainant was apprised of the fact that the Applicant herein is not being granted protection and he seems to be more than happy

about it. It appears that he had sworn the affidavit under family pressure and on the advise of the Advocates representing the Applicant. It is clear that the purpose for filing the affidavit was misrepresented and it has been obtained by deceit.

10) Fearlessly, father of Respondent no. 2 has also submitted before the Court that he was brought to the High Court by the Advocate representing the Applicant and that he has been threatened by the accused and therefore, he has succumbed to the pressure.

11) Cases involving offences against women do not deserve to be compromised even before the investigation is completed. In view of the above discussion, application deserves to be rejected. It is made clear that observations made herein above are prima facie in nature and shall not be considered while deciding an application under section 439 of the Code of Criminal Procedure, 1973, quashing of F.I.R., discharge application or at the time of trial.

12) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)