

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL BAIL APPLICATION NO. 1703 OF 2016

Agnu Ramu Kalel

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. D. D. Ranaware Advocate for Applicant.

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

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATED : SEPTEMBER 16, 2016.**

**PC :**

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 23/10/2015 in crime no. 119 of 2015 registered at Mhaswad Police Station for offence punishable under section 376 (2) (N) (L), 504, 506 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 23/10/2015, one Gayabai Kalel lodged a report at the police station alleging therein that her daughter Ms. 'X' is a special child. Her cognitive potential is poor and therefore, she was made

ism

to leave the school. It is further submitted that due to poor financial conditions, complainant had not taken her daughter for any medical treatment. It is further alleged that present applicant happens to be their neighbour. On 22/10/2015, her daughter was vomiting intermittently and therefore, she was taken to the doctor, who upon examining her, disclosed that she had conceived pregnancy. Complainant had taken her child into confidence and had enquired with her. Her daughter had disclosed to her that for the past four months, she was being sexually abused by the present applicant and that he had threatened her of dire consequences and therefore, she could not disclose the same to her parents.

3) The learned counsel for the applicant submits that in the F.I.R. complainant has stated that the victim has studied up to 4<sup>th</sup> standard, however, the school leaving certificate would show that she had studied up to 7<sup>th</sup> standard. It is also submitted that there is a delay in lodging F.I.R. That the victim had not disclosed to her parents about the sexual abuse at the hands of the present applicant. According to the learned counsel, it is the case of false implication. The D.N.A. report is not received and therefore, today applicant deserves to be enlarged on bail. It is also submitted that the victim used to go

for grazing the cattle. That it cannot be said that applicant had taken undue advantage of the poor mental capacity of the victim.

- 4) It appears from the compilation of the charge-sheet that pregnancy was terminated since, it was a case of rape and moreover, the victim and her parents would not be able to take care of the child that would be born out of the said incident. The foetus has been sent for D.N.A. testing. *Prima facie* it appears that an offence punishable under section 376 of the Indian Penal Code has been made out by the investigating agency. It is clear that applicant had taken undue advantage of a special child and hence, in these circumstances, application, being sans merits, deserves to be rejected. However, it is made clear that observations made herein above are restricted to consideration of an application under section 439 of the Code of Criminal Procedure, 1973 and learned Sessions Judge shall not be influenced by the same at the time of trial.
- 5) Application stands rejected.

**(SMT. SADHANA S. JADHAV, J.)**