IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1836 OF 2016

Avinash Machindra Thorat ... Applicant
Vs.
The State of Maharashtra … Respondent

Mr. Ritesh Thobde,Advocate for the applicant.
Mr. S.H.Yadav, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 18th October, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arersted on 19.4.2016 in Crime No.284 of 2016 registered at Mohol Police Station, Dist. Solapur, for the offences punishable under Sections 376(2)(i) of the IPC and under the provisions of Protection of Children from Sexual Offences Act, 2012.

2. It is the case of the prosecution that on 18.4.2016, Pinku Thorat lodged a report at the police station that on that day in the afternoo, her minor daughter aged about 8 years had been to the house of her cousin brother-in-law Machindra Thorat for watching T.V. She had not returned home for quite some time and the first informant went to the house of

Machindra Thorat. There she did not find her daughter watching T.V. and therefore, she went inside the house where she saw the present applicant sexually abusing her minor daughter. She had reached at the appropriate time and saved her daughter. The applicant was arrested on the very next day.

3. The learned counsel for the applicant submits on the basis of the papers of investigation that there is no medical evidence to show that there was vaginal intercourse and therefore, according to the learned counsel for the applicant, the offence under Section 376 of the IPC is not completed and the applicant could only be prosecuted for sexually abusing the minor.

4. As against this, the learned APP submits that in fact, the mother of the victim i.e. the first informant had reached the spot in the nick of time and therefore had saved her daughter from such damage and hence there is no medical evidence . However, the attempt to commit an offence under Section 376 of the IPC would be complete and the applicant could be charged with an attempt to commit rape. That the applicant happens to be a close relative of the victim girl. The applicant in the given set of

circumstances does not deserve to be enlarged on bail. It is extremely unfortunate that minor girls are not safe amidst their relatives also.

5. The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be considered at the time of trial.

The Application stands rejected.

(SMT.SADHANA S.JADHAV, J.)