

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2395 OF 2016

Deepak Mohan Lokhande

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. V. V. Purwant Advocate for Applicant.

Mr. R. M. Pethe APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 1st DECEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 01/07/2016 in crime no. 190 of 2016 registered at Walchand Nagar Police Station for offence punishable under sections 376 of the Indian Penal Code and section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 30/06/2016, Nileema Bishwas lodged a report at the police station that she has one daughter Ms. 'X' who is aged about 5 years and 11 months and a son aged about 13 years. On

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30/06/2016, her minor daughter had left the house for playing at about 5.00 p.m. She returned home after sometime and she had changed her under garments. Upon enquiry, she informed her mother that the present applicant who is residing in close proximity had sexually abused her. The mother of the victim therefore lodged report on the basis of which crime no. 190 of 2016 is registered with Walchand Nagar Police Station for the alleged offences.

3) The statement of the victim is also recorded under section 164 of the Code of Criminal Procedure, 1973 and she has reiterated the contentions of the statement which she has disclosed to her mother and to the police under section 161 of the Code of Criminal Procedure, 1973.

4) The learned counsel for the applicant submits that applicant is a young boy of 19 years old and that his age may be taken into consideration. It is also submitted that the investigation is completed and charge-sheet is filed. The learned counsel has drawn the attention of this Court to the observation of the Medical Officer at the time of examining the victim. Observations are as follows:

“e) Overall findings are consistent with sexual intercourse/assault; however final opinion is kept pending till receipt of FSL reports OR

f) Evidence of sexual intercourse/assault cannot be ruled out.

Hence, final opinion is kept pending till receipt of FSL reports OR

g) Opinion reserved pending till receipt of FSL and/or
(if any) investigations AND/OR

h) Examination findings s/o sexual assault Ć Digital penetration (By
finger) Ć semen deposited by masturbation”.

5) According to the learned counsel, as per the medical report coloumn
no. (h) it cannot be said that an offence under section 376 of the Indian Penal
Code is attracted.

6) By . amendment of 2013, vide Criminal Law (Amendment) (Act 13 of
2013), the Legislature has sought to give a broader meaning to the offence of
'rape'. Accordingly, while the earlier definition of 'rape' was confined to an act
of sexual intercourse, the amended definition of rape includes either of the
following acts:

(a)

(b) *insertion, to any extent, any object or a part of the body, not
being the penis, into the vagina, urethra or anus of a woman or making
her to do so with him or any other person; or*

(c) *manipulation of any part of the body of a woman so as to cause
penetration into the vagina, urethra, anus or any part of body of such
woman or making her do so with him or any other person; or*

(d) ”.

7) As a result of these changes, a person can be liable under this offence not only when he himself actively participates in the offence, but also when he passively participates in the offence by causing a woman to do any of the above-mentioned acts with another person. Due to the detailed and descriptive nature of the definition of rape now given in the amended provision, the earlier '*Explanation*' whereby the word 'penetration' was explained, has now been omitted. The act of the applicant is covered under section 376 (i) of the Indian Penal Code and the punishment may extend to imprisonment for life and fine.

8) In view of this, the submission that the section 376 of the Indian Penal Code is not attracted does not hold good ground. The victim is hardly 6 years old. That she has been sexually abused. It is a heinous offence which shocks the conscience of the Court and hence, application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)