

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.809 OF 2016
(Shubham s/o Ramesh Mundle vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri R.M. Daga, Advocate for applicant.

Shri V. Gangane, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : NOVEMBER 18, 2016

Heard learned Counsel for both sides.

This is an application for grant of bail by
applicant having been involved in the offence punishable
under Section 376(2)(i) of Indian Penal Code read with
Sections 4, 6 and 8 of Protection of Children from Sexual
Offences Act, 2012.

Shri Daga, learned Counsel for applicant,
submits that applicant is falsely involved as documents
with charge-sheet reveal that though the incident had
occurred on 5/3/2016, report came to be lodged 5 days
thereafter. It is contended that according to prosecutrix
as well as first information report, act of penetration is
attributed to applicant, however, said statements are
belied by the medical evidence as hymen is stated to be
found intact on examination of prosecutrix. It is also
submitted that as charge-sheet is filed, only
apprehension which can be raised by prosecution, is of
applicant's tampering with prosecutrix and if applicant is

found to be entitled for bail, he is ready to reside out of village. It is, therefore, prayed that the application may be allowed.

Shri Gangane, learned Additional Public Prosecutor for respondent, has opposed the application by contending that there is a direct evidence establishing involvement of applicant. It is submitted that apart from statements of prosecutrix and report lodged by her mother, there are also other independent witnesses, who are neighbours and who had seen prosecutrix coming out of the house of applicant at the time of incident. It is, therefore, prayed that application may be rejected.

Perused the documents filed with the charge-sheet. Prosecutrix is aged about 5 years and according to report lodged by her mother on 10/3/2016, incident had taken place on 5/3/2016 at about 3 p.m. According to its contents, on that date, applicant invited prosecutrix to his house, who was his neighbour, for having potato chips and on her arrival in his house, closed both doors of his house. After sometime, mother of prosecutrix heard shouts of prosecutrix from the house of applicant and noted that doors of house were closed. The report further reveals that though complainant was giving shouts from outside, as sound of deck and television set was in high volume, her attempt was futile and after about half an hour, applicant opened the door and she found her daughter crying. On enquiry with applicant, he appears to have informed that since prosecutrix fell from kitchen platform, she was crying and that he had not done anything to her. However, prosecutrix on

enquiry made by her mother, involved applicant to have sexually assaulted her after removing her clothes. These facts were informed by complainant to her husband and thereafter they consulted their relatives and on 10/3/2016 lodged report.

Having considered contents of the report as aforesaid, applicant's involvement is prima facie found so also delay appears to have been sufficiently explained, which needs consideration in view of the fact of age of prosecutrix, who is only 5 years old and parents as well as relations in that case before lodging any report might have taken sometime to consider whether to lodge report or not.

Perusal of medical report though reveals that on examination of prosecutrix on 10/3/2016, she has not stated name of applicant while giving history to Medical Officer and though this document further reveals that hymen was certified to be intact, both these counts also do not entitle applicant to be released on bail for the reason that age of prosecutrix is 5 years and she could not have such understanding when in her statement, she has attributed act of penetration, which is a matter of evidence. Similarly, she also cannot have sufficient knowledge to disclose name of person, who has sexually assaulted her, while giving history to the Medical Officer. In the circumstances, case of applicant does not stand for any reason on either of these counts.

Apart from evidence as aforesaid, prosecutrix case is found to be further substantiated by independent witnesses, who are neighbours, namely, Mangala and

Varsha whose statements were recorded one day after crime was registered wherein they have involved applicant and have stated that they had seen prosecutrix coming out of the house of applicant and was crying and on enquiry by her mother, has involved applicant to have sexually assaulted her.

Having considered evidence as aforesaid, prima facie involvement of applicant is established. The application is thus devoid of merits and hence, the same is rejected.

JUDGE

khj