

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1435 OF 2017

Tushar Baban Lad	Versus	.. Applicant
The State of Maharashtra		.. Respondent

Mr.N.V. Gaware, Advocate for the applicant.
Mr.S.M. Ganachari, A.P.P. for respondent/State.

CORAM : T.V. NALAWADE, J.
DATED : 17.04.2017

P.C. :-

1. This application is filed for bail. Both the sides are heard. The papers of investigation were made available for perusal of this Court.

2. The crime is registered on the basis of report given by the prosecutrix, who was aged about 17 years and four months on the date of the report. She used to go to a college with her cousin sister. They used to first go on bicycle at a place, where they used to get S.T. Bus for going to the place where the college was situated. They used to return home by the same way.

3. The prosecutrix has made allegations that present applicant and one more boy, by name, Rahul were after them and they were moving on motor-cycle around them for long. It is case of the prosecutrix that

initially they ignored these acts of the applicant. Then the present applicant threw a chit in her school bag to inform his mobile phone number. They started having talk on the mobile phone. The prosecutrix was taken to a place on motor cycle by the present applicant. On that occasion some photographs of the prosecutrix were taken by the present applicant and he started giving threats that he would use the photographs to defame her.

4. About 3-4 months prior to the date of the report, applicant approached the prosecutrix at S.T. Stand of Karjat and there he said that he wanted to marry with her. They he gave threat of life to the prosecutrix and took her to one lodge on his motorcycle. There he committed rape on her and he gave threat to the prosecutrix not to disclose the incident by saying that he would show that photographs to all. On one more occasion, he raped her. Due to the harassmt, the prosecutrix consumed poison on 06.10.2016. When she was vomiting, enquiry was made with her by her father, then she disclosed the conduct of the present applicant. They tried to approach the present applicant, but he left the village and he absconded. Then report was given and crime came to be registered for the offences punishable under sections 376, 376(D) etc. of the Indian Penal Code and under some provisions of the Protection of Children

from Sexual Offences Act.

5. This Court has gone through the material like statements of other witnesses and record of medical examination. This record is consistent with the version given by the prosecutrix.

6. The learned Counsel for the applicant submitted that the cousin sister of the prosecutrix had given similar report against Rahul and in that matter, the Sessions Court granted bail to Rahul and so bail needs to be granted to the present applicant also. He placed reliance on the observations of the Apex Court made in the case of Gurbaksh Singh Sibbia: Sarbajit Singh Vs. State of Punjab, 1980 AIR (SC) 1632. The Apex Court has discussed the powers of Court under sections 437 and 438 of the Criminal Procedure Code to grant bail. There is no dispute about the powers given to the Court, but the powers are discretionary powers. The powers can be used by the Court when the Court is satisfied that the discretion needs to be used in favour of the applicant involved in such serious case. It can be said that present applicant knew that the prosecutrix was a minor and she has not completed 18 years of age. In spite of that circumstance and when he is aged about 24 years, he harassed her, established contact with her and raped her

by taking her to a lodge. Due to the harassment, the prosecutrix thought that it was proper to finish her life and she attempted to commit suicide. This circumstance cannot be ignored. Thus, the present applicant has virtually destroyed the future of the prosecutrix. No lenient view can be taken in favour of the person like present applicant. The submission of learned Counsel for the applicant that there was consent of the prosecutrix is not at all acceptable, in view of the definition of rape and amendment effected to the provision to make the age as 18 years. When a person commits sexual intercourse with a girl, who has not completed 18 years of age, consent is immaterial and offence is committed. There is also possibility of tampering with the prosecution witnesses. In view of these circumstances, this Court holds that no relief can be granted in favour of the applicant.

7. In the result, the application stands rejected. The observations made in this order are for the present purpose only.

[T.V. NALAWADE, J.]