

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

909 CRIMINAL APPLICATION NO. 2320 OF 2017

SUBRAO S/O. RAMA BHOSALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Sudarshan J. Salunke.
APP for Respondent : Mr. S. J. Salgare.
...

CORAM : **K. L. WADANE, J.**
DATE : 15th June, 2017.

P.C.:

. The present application is filed by the Applicant under the provisions of Section 439 of the Code of Criminal Procedure in connection with Crime No.26 of 2015 dated 4th May, 2015 registered with Ambi Police Station, District Osmanabad for the offences punishable under Sections 376, 452, 323 and 504 read with 34 of the Indian Penal Code and under Sections 4 and 17 of the Protection of Children from Sexual Offences Act, 2012.

2 On 4th May, 2015, the prosecutrix lodged a complaint to the Ambi Police Station that on 2nd May, 2015 at about 08:00 pm after taking dinner she slept in her house. At about 09:00 pm to 10:00 pm, somebody knocked the door by saying “चिवे दरवाजा उघड”. So she

opened the door and noticed that her uncle namely Subrao Rama Bhosale i.e. present Applicant and two others namely Khana Butya Pawar and Manjir Shivaji Kale. On seeing so, the prosecutrix asked the Applicant as to how he came. Suddenly he started beating the prosecutrix. The present Applicant kept the prosecutrix and Manjir in the house and closed the door and latched from outside. Thereafter, Accused Manjir committed rape on her. When the incident was going on, the prosecutrix making hue and cry therefore, another accused Khana came there. The Accused Manjir and Khana tied the prosecutrix with the help of rope and then Accused Manjir removed the clothes of the prosecutrix and committed rape. On the information given by the Complaint, offence came to be registered as referred above.

3 I have heard the argument of Mr. Salunke, learned counsel for Applicant and the learned APP for the State.

4 By referring the earlier contents of the FIR, Mr. Salunke, learned counsel argued that there was enmity between the prosecutrix her mother and the present Applicant. If the contents of FIR are perused in the light of the medical evidence on record then it will be seen that allegations made by the Applicant are not groundless.

Therefore, reference has been made to the medical certificate of the prosecutrix, who examined on 5th May, 2015. On perusal of the contents of medical certificate, it reveals that marks of violence were noted on the person of the prosecutrix i.e. nail abrasion two in number on left cheeks, blunt trauma right cheek. This *prima-facie* suggests resistance by the prosecutrix at the time of commission of alleged incident. On further examination, it was found that the hymen was ruptured, which is indicative of sexual intercourse. The opinion given by the concerned medical officer is that "In my opinion possibility of intercourse cannot be ruled out." Now the law in reference to the evidence of victim is well settled and if the sole testimony of the prosecutrix in a sexual assault if found to be trustworthy, can be basis for the connection and no other material is required. In the light of the above observations, I am of the opinion that the Applicant is not entitled for bail since his involvement and role is specifically stated by the prosecutrix. Hence, the following order:

ORDER

- I. The application is rejected.
- II. It is made clear that these observations are made at a very preliminary stage for consideration of the

prayer of bail only and the learned Trial Court shall not be influenced by any of the observations made hereinabove.

[K. L. WADANE, J.]

ndm