

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 15 OF 2017

Sohrab Shaikh s/o Sher Ali Shaikh

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. S. G. Rajput a/w Mr. S. B. Gothwal Advocate for Applicant.

Mr. Deepak Thakare APP for the State.

Ms. D. T. Gaikwad, WPSI, Shantinagar Police Station,
Bhiwandi, Dist. Thane.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 6th JANUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 03/07/2016 in crime no. 197 of 2016 registered at Shantinagar Police Station. Investigation is completed and charge-sheet is filed on 14/09/2016 against the present applicant for offence punishable under sections 376, 377 and 342 of the Indian Penal Code and sections 3, 4, 7 & 8 of Protection of Children from Sexual Offences Act, 2012.

2) It is the case of the prosecution that on 03/07/2016, Ms. 'X' aged about

ism

13 years lodged a report at the police station alleging therein that present applicant was residing as a tenant in the room of her father since four months. According to her, he had forced her to accept a cellphone and sim card. She had accepted the sim card under coercion. Prosecutrix and the applicant used to converse and communicate with each other quite often. According to her, one day, he had asked her to reach at Kalyan Road. She had obliged. He was waiting for her. Thereafter, they both had gone for a ride. While in car, he had forced her to have oral sex. It is alleged that on several occasions, he had coerced her to have oral sex. According to her on 29/06/2016, eh had called her to his room. She had obliged. Thereafter, she was detained in the said room till the next day and during that period, he had forcible sexual intercourse with her.

3) She has specifically alleged that on 01/07/2016, she had informed her parents about the act committed by the applicant. They had discussion and then it was decided to initiate criminal prosecution. Accordingly, on the basis of her report, crime no. 197 of 2016 was registered. The victim was sent for medical examination. That history of the incident was disclosed to the doctor by the prosecutrix herself. She had disclosed to the doctor that she was

acquainted with the applicant since one year, they had gone to Kalyan where they stayed in his house and had sexual intercourse. Accused was also sent for medical examination and the history is of oral sex.

4) The statement of the father of the victim was recorded on 04/07/2016 and according to him, on 29/06/2016 late in the evening, his wife had disclosed to him that their daughter Ms. 'X' had not returned home. They were searching for her. According to him, applicant had also helped him to search for the victim. It is further stated that on the next day i.e. on 30/06/2016, father of the victim was to file a missing complaint and at that time, he received a phone call from the prosecutrix and she had disclosed that she was not aware as to where she has been detained. The father asked her to return home by rickshaw. There is no material on record to indicate the place from where she returned home. She returned home at 3.00 p.m. and had disclosed to her parents about the act committed by the applicant.

5) It is further pertinent to note that the statement of the victim was recorded under section 164 of the Code of Criminal Procedure, 1973 wherein she has disclosed that she was acquainted with the present applicant. She had voluntarily gone for a ride with the applicant and he had forced her to have

oral sex in the car. It is further alleged that he had taken her to an unknown place and had detained her at the said place for more than 10-15 days and had dropped her at the Octroi Naka from where she approached the police and the police called her parents and informed about the incident.

6) It is apparent that the prosecutrix is not sure as to whether she was detained for one day or 15 days. Moreover, she had firstly disclosed to the police and then parents were called by the police, but the F.I.R. and the statement of the father speak otherwise.

7) It is pertinent to note that within two months after the earlier incident, i.e. on 06/09/2016, same prosecutrix had approached Shantinagar Police Station and had filed a report that she was acquainted with one Sania @ Margina. She had stayed with Margina at Titwala 2-3 months prior to 06/09/2016. That on 17/08/2016, Margina had taken her to Marole Pipeline, Andheri (East) and there she had detained prosecutrix for some time and there she was ravished by brother of Margina and his three associates. She has given the details of the incidents dated 18/08/2016, 19/08/2016 and 20/08/2016 where she was sent to different places and was ravished. She was also taken to a lodge. On the basis of the said report dated 06/09/2016, crime

no. 269 of 2016 is registered at Shantinagar Police Station against accused for offence punishable under section 376 of the Indian Penal Code. Accused Prince Valsala and accused Irshad and others have been enlarged on bail by the Special Court, Thane.

8) The learned counsel for the applicant submits that prosecutrix is in habit of leaving the house voluntarily and thereafter, she has implicated many people for similar offences as is apparent on the face of record. The learned counsel also submits that discrepancies in statement under section 154 of the Code of Criminal Procedure, 1973 and 164 of the Code of Criminal Procedure, 1973 are writ large and they go to the root of the matter. The truthfulness of the allegations levelled by the prosecutrix are questionable. Applicant has been in custody since July 2016 and therefore, he deserves to be enlarged on bail.

9) As against this, the learned APP submits that *prima facie* the allegations need to be taken into consideration and the truthfulness can be verified at the time of trial.

10) However, taking into consideration the material collected by the investigating agency, discrepant statements of the victim at different stages,

within two months from the date of registration of the present F.I.R. she had levelled similar allegations against other accused who are enlarged on bail and the fact that the investigation is completed and charge-sheet is filed, applicant deserves to be enlarged on bail upon imposing certain conditions. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more local solvent sureties in the like amount.
- (iii) Applicant shall not reside in Bhiwandi till the conclusion of the trial and shall not leave Mumbai, Thane and Palghar without prior permission of the Court.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)