

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 68 OF 2017

Kishor Shivaji Bhide	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr.Kuldeep U.Nikam, Advocate for the applicant.
Ms. Veera Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 22nd March, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 5.4.2016 in Crime No.49 of 2016 registered at Turbe MIDC Police Station on 5.4.2016. The investigation is completed and charge sheet is filed against the applicant on 21.6.2016 for the offence punishable under Section 376 of the Indian Penal Code and under Sections 3, 4, 5(j)(ii), 5(m) and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. It is the case of the prosecution that on 5.4.2016, Mr. Raju Ghogare was informed by his wife that their daughter Ms. 'X' is not going to the school and she continues to remain at home. The mother had noticed that her minor daughter who was hardly 15 years old did not have menses

for the preceding two months and therefore she was taken to the Corporation Hospital at Vashi. After examining the patient, the doctor had informed her mother that Ms.`X' has conceived pregnancy and that she is pregnant of about 8 weeks. Upon enquiry, Ms.`X' had disclosed that she was in love with the present applicant. He had promised to marry her and under the pretext of marriage, he had sexual intercourse with her. The parents had to gather courage and thereafter approached the police station and lodged the report, on the basis of which Crime No.49 of 2016 is registered.

3. Perused the statement of the victim. She has also stated that she was in love with the present applicant and that he had promised to marry her and she had conceived pregnancy.

4. The learned counsel for the applicant vehemently submits that the victim and the applicant are young people. They were in love. That since there were intimate relations, the victim had consented to have sexual intercourse and therefore, it is a consensual intercourse between the victim and the applicant and in these circumstances, the applicant who has been in custody for almost one year deserves to be enlarged on bail. It is also submitted that there was no coercion on the part of the applicant to have sexual intercourse.

5. At this stage, the learned APP has drawn attention of this Court to the impugned order passed by the Special Court.

6. In the course of hearing of the Bail Application before the Special Court in Special Case No.158 of 2016, the learned Advocate representing the applicant had made a statement before the Special Court that the victim is used to have sexual intercourse and also used to file false complaints against people. The learned Advocate had shown a video clipping of the victim being brutally beaten by crowd. The video clipping had shocked the conscience of the Court wherein the helpless minor girl was being brutally assaulted by them in a public place. Upon enquiry with the Investigating Officer, the Special Court was informed by the I.O. that FIR No. 134 of 2016 has been lodged in respect of the incident, where the victim was brutally assaulted in a public place and the culprits therein were relatives and the friends of the present accused-applicant. The video clippings show that the accused had tied the hands of the victim and there was an attempt to denude her of her clothes and slapped her in public place. The learned Special Court had rightly observed that the misconduct of the applicant in orchestrating the above beating and humiliation of the victim shows the extent to which the applicant can stoop and wrongly pressurize the victim. It is unfortunate that rape survivor who had not made

any incriminating allegations against the applicant was beaten up in a public place only for disclosing the name of the applicant from whom she had conceived pregnancy. The learned Special Court shall take the video clipping on record and see that it forms a part of the records and proceedings in the present case besides prosecution in Crime No.134 of 2016. Needless to say that it would be the onus of the prosecution to substantiate that the incident in respect of which Crime No.134 fo 2016 is registered, had occurred at the behest of the present applicant, his relatives and friends. Since the victim had not even attained age of majority, much less she was less than 16 years old at the time of incident, the consent of the victim cannot be taken into consideration as it would be a statutory rape.

7. The application being sans merit, stands rejected.

(SMT. SADHANA S.JADHAV, J.)