

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 119 OF 2017

Deepak Kumar Deviprasad Sonar ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr. P.M.Choudhary, Advocate for the applicant.

Mr. R.M.Pethe, APP, for the State.

Mr. Dewade, PSI, Bangur Nagar Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 16th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 20.3.2016 in Crime No.83 of 2016 registered at Bangur Nagar police Station. The investigation is completed and charge-sheet is filed in June 2016 against the applicant for the offences punishable under Sections 366, 376(2)(I), 376D of the Indian Penal Code and under Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. It is the case of the prosecution that on 6.3.2016, Mohamed Talib Hasan Khan lodged a report at the police station alleging therein that

his wife had informed him that their minor daughter had left the house to meet her friend. His daughter had not returned home and therefore there was an enquiry with the victim's friend Mayuri. Upon enquiry, Mayuri had informed that the victim had left her company long back. They had started searching for her. At about 12.30 p.m. a boy residing in the same locality had informed the wife of the first informant that the victim was seen in Thakre Garden with Alpesh Azam Shaikh. Karan had informed the victim that her mother was searching for her and had asked her to return home immediately. The victim had not returned home till 6.3.2016. They had then lodged a missing report at the police station. On 7.3.2016, at about 9.30 a.m., the police had called upon the brother of the victim and had informed him that the victim was found roaming on Mahim Railway Station Platform. The victim had disclosed that when Karan had seen her in the company of Alpesh she was scared that he would inform her mother and therefore instead of going home she had gone to her FaceBook friend Sunny @ Shami. Sunny @ Shami had taken her to the house of the present applicant as his parents were out of station. She had disclosed that Sunny @ Shami and Deepak had forcible sexual intercourse with her on that relevant night on the mezzanine floor of the house. On the basis of the said report, Crime No. 83 of 2016 was registered against the present applicant

and his friend Sunny @ Shami for the offence punishable under Section 376 of the Indian Penal Code.

3. Perused the statements of the witnesses, more particularly the statement of the friends of the present applicant and Sunny @ Shami. Imtiyaz had disclosed that he was in the house of the present applicant along with his friends on the relevant night. On 5.3.2016, at about 11 p.m., Sunny @ Shami had come home along with a girl. Sunny @ Shami and the girl were chit-chating on the mezzanine floor of the said house. She was referred as girlfriend of Sunny @ Shami. As far as the present applicant is concerned, he has stated that they had heard Sunny @ Shami and the victim girl talking with each other and at that time, Deepak i.e. the present applicant had also been to the mezzanine floor for a short while, talked to the girl and thereafter he had slept with Imtiyaz. Imtiyaz presumed that both boys had done some sexual advances towards the said victim and thereafter withdrawn from the company of the trio.

4. Kumar Ansar disclosed to the police that 3 months prior to 1.4.2016, he had received a request from the girl whose name was shown as 'Tamanna smoking roy.' He had accepted the friend's request. They used to chat with each other. She had got connected with his other friends. That on

6.3.2016, he had been to the house of the applicant and there he saw Shami and the victim girl. The said girl is the prosecutrix who was introduced to Kumar Ansar as Tamnna smoking roy @ Ms.X. Sunny @ Shami had disclosed that the victim girl had come in the said area and had requested him that she desires to stay with him for one day. Sunny @ Shami had brought her to the house of the present applicant. On the next day also he had seen the girl in the same house. She had no grievance. According to the witnesses, the victim girl had been to Mahim Slum area in search of Sunny @ Shami. On her request, she was kept in the house of the present applicant. There are similar statements of other witnesses who have disclosed that the girl had visited the said area voluntarily and she was known as the girlfriend of Sunny @ Shami.

5. The learned counsel for the applicant submits that only because Suni happens to be a friend of the present applicant and that Sunny @ Shami and the victim had stayed in the house of the present applicant at the relevant night, he has been falsely implicated. It prima facie appears that the victim was known to Sunny as they were Facebook friend. She had sent friend request to several others and had got connected with the present applicant also as a friend of Sunny @ Shami. It is not a case of abduction or kidnapping. Two witnesses have specifically stated that the present

applicant has no concern with the said incident. As on today, it is doubtful whether the present applicant had taken any undue advantage of the victim.

6. Be that as it may, the investigation is completed and charge sheet is filed, the specific role is attributed to Sunny @ Shami and not the present applicant by the witnesses. It appears that the victim had attained an age of understanding although she was a minor of 13 years old. She had opened a Facebook Account in the name of Tamnna smoking roy and had sent friendly requests to several boys who happened to be the friends of Sunny @ Shami. It also appears from the papers of investigation that she had voluntarily gone to Mahim area in search of Sunny @ Shami and had sought space to spend the whole night. Since the parents of the applicant were out of station, she was taken to the house of the applicant. It is true that she had reposed faith in Sunny @ Shami and that at least prima facie he should not have taken any advantage of her casual nature. The role attributed to the present applicant is different from the role attributed to Sunny @ Shami and therefore the applicant deserves to be enlarged on bail. However, one of the co-accused shall claim parity with the present applicant.

7. The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of

quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report to the Bangur Nagar Police Station on first and third Sunday of each month till framing of charge.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)