

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 239 OF 2017

Yogesh Shamrao Jadhav	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Arjun Patil i/b. Arjun Patil Law Global, Advocate for the Applicant.
Mr. Rajan Salvi, APP for Respondent – State.
Mr. R.S. Sartape, Police Naik, Vaduj Police Station, District Satara present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **30th January, 2017.**

P.C.:

This Application is moved for bail, as the applicant/accused is prosecuted for the offences punishable under sections 376, 504 r/w. 34 of the Indian Penal Code and Sections 4, 6 and 11 of Prevention of Children from Sexual Offences Act, 2012 in C.R. No. I-151 of 2016 dated 28th June, 2016.

2. It is the case of the prosecution that at the time of incident, i.e., on 14th June, 2016, the victim girl was 7 years old and studying in II Std. The applicant/accused was working as a disciple of priest, who used to perform rituals and worship in the Shree Ram Temple. The house of the victim girl was close to Shree Ram Temple. At around 4.15 p.m. she went to the temple to bring cellphone which was given to the applicant/accused for charging, as the electricity was not available in her house. When she

returned, the mother of the prosecutrix found that her gait was not steady. The girl called her mother and insisted that she wanted to go for nature's call and took her mother along with her. Thereafter she told her mother that there is blood from her private part. When her mother enquired about it, the victim girl told that when she went to temple, applicant/accused made her to sleep, pulled her nicker and when she urged to leave her, the applicant told her to keep quiet and then he pushed his penis to her vagina. Immediately thereafter he heard the footsteps of somebody and therefore he left her and the girl came home. After hearing this incident, her mother informed this incident to all her family members and they all went to the temple and met the main priest Hanumant Dattu Shinde Maharaj and the applicant/accused. At that time, the priest told them not to disclose this fact to anybody and if at all it is informed to the police, then they would be killed. Thereafter the applicant was sent to some other place. On 28th June, 2016 the applicant/accused again returned to Shree Ram Temple and started abusing the complainant and her family members and threatened them of life. Thereafter the mother of the prosecutrix mustered courage and gave information to the police. The applicant was arrested on 28th June, 2016. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that this is a false case. There is delay in giving information to the police. He

further relied on the medical certificate of the girl and so also the medical report of the accused. The learned counsel submitted that the medical report of the girl is negative, so also the medical officer has expressed that no opinion can be given in respect of the accused about erection, as the size of the penis is small. The learned counsel further submitted that the applicant/accused is falsely involved in this case. He further submitted that the applicant/accused is a pious person and has renounced the world when he was 16 years old and is a disciple of Hanumant Shinde Maharaj. He further submitted that the complainant and her family members wanted to garb the temple and therefore the applicant/accused is falsely implicated in this case. He further submitted that there is one independent witness like Sou. Kamal Sadashiv Mane, whose statement is recorded on 2nd July, 2016 wherein she has stated that on 14th June, 2016 at around 4.30 p.m. the applicant/accused was painting the wall of the temple and nobody came in the room or went out. The learned counsel submitted that the applicant/accused is in the prison since then and hence he be released on bail.

4. Learned APP opposed the Application and has relied on the statement of the complainant and statement of the prosecutrix. He submitted that there is no sufficient evidence against the applicant/accused.

5. Perused the complaint, statement of the prosecutrix and statement of the witnesses which are relied by both the counsel. The victim girl at the time of incident was 7 years old. In her statement dated 28th June, 2016 she has specifically described the act of sexual assault committed by the applicant/accused. She told that the applicant/accused allowed her to go after hearing the footsteps of somebody. In her statement she has mentioned of one Vaishalikaki. The statement of Vaishali Pawar is recorded on 29th June, 2016 who has stated that at around 4.15 p.m. when she was returning from farm, she noticed the victim girl running out of the room of temple and was very scared and could not walk or run properly. Her gait was unstable and immediately thereafter the mother of the victim informed her that her daughter was sexually assaulted in the temple. It is to be noted that the incident took place on 14th June, 2016. The medical examination of the victim girl took place on 29th June, 2016. Thus, nearly after 14 days, the victim was medically examined and therefore the report of medical examination can be nil. Moreover, the girl has not stated anything about ejaculation, however, considering the manner in which the incident has taken place, it appears that *prima facie* this case falls under relevant sections of Prevention of Children from Sexual Offences Act. The offence is serious.

6. There is a delay of nearly 14 days in lodging the FIR. However, the

said delay is explained by the mother and paternal aunt of the victim girl that the applicant/accused and priest both have threatened of life of mother and family members of the victim. Moreover, as per the statement of mother of the prosecutrix, after disclosure of the incident by the girl, the complainant and her family members rushed to the temple and questioned about the incident to the priest and his disciple, i.e., applicant/accused. At that time, the priest told not to speak about it and he sent the applicant/accused to some other place. Thus, till 28th June, 2016 the applicant/accused was not present in the village. However, when he returned on 28th June, 2016 again he started threatened and abusing them. Therefore, the mother of the prosecutrix gave information to the police. Under such circumstances, *prima facie* there is evidence against the applicant/accused. The victim was minor and of 7 years old. Hence, I am not inclined to grant bail to the applicant/accused. Bail Application is rejected.

(MRIDULA BHATKAR, J.)