

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 203 OF 2016

Sharif Ahmad s/o Asgar Ali
V/s.

.....Applicant

The State of Maharashtra

....Respondent

Mr. Shailesh Kantharia i/b Mr. Prem Sagar B. Bind Advocate for Applicant.
Ms. P. P. Shinde APP for the State.
Mr. H. M. Chabukswar, PSI Bhandara Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 14th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 26/03/2015 in crime no. 24 of 2015 registered at Bhandara Police Station on 18/01/2015.

2) It is the case of the prosecution that on 18/01/2015 Vinayak Bavankule lodged a report at the police station alleging therein that his daughter is missing since 17/01/2015 as she has left the house without informing anybody. He suspected that his daughter had been abducted and therefore, the offence was registered under section 363 of the Indian Penal Code. On 26/02/2015, Vinayak received a telephonic message that his daughter was in Mumbai. Father had reached Mumbai and had taken the victim to Bhandara.

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She had refused to go through medical examination. Subsequently the victim girl had informed her parents that she does not desire to reside with her parents and therefore, she was to be admitted in Child Reformation Home. Before admission, she was examined medically and at that time, doctor had disclosed that she was carrying pregnancy of 40-45 days.

3) On 04/03/2015, statement of the victim was recorded and she had specifically stated that on 08/12/2014, she was annoyed with her parents as they used to scold her and that they had taken admission for her in school at Satona. That on 17/01/2015, she left the house, took a train to Mumbai and landed in Mumbai. That she had no acquaintances in Mumbai and therefore, she was doing sundry jobs and earning her living. She used to sleep on the footpath, railway station etc.

4) On 19/03/2015, her supplementary statement was recorded and there, she had stated that on 25/01/2015, she had met present applicant at Dadar Railway Station. Applicant used to sell clothes on the railway station. He was original native of Lucknow. On 27/01/2015, since she had no place to stay in Mumbai, he had offered her to stay with him. She agreed to stay with him. While she was staying with him, one fine day, he told her that he is in love

with her and intends to marry her. She also consented for the marriage. One day, according to her, he had intercourse with her and till 28/02/2015, he continued to have sexual intercourse with her. She has further stated that on 26/02/2015 applicant had called upon her father and informed him about the whereabouts of the victim. According to the victim she was scared of being exposed to social obloquy and she was also scared of being humiliated in society and therefore, had not informed her parents about the acts committed by present applicant. In any case, she did not wish to stay with her parents and therefore, they decided to admit her in a reformation home. Only when it was revealed that she has conceived pregnancy, she had disclosed that the present applicant had ravished her. It was on the basis of this statement that applicant was arrested.

5) Applicant had filed an application under section 439 of Code of Criminal Procedure, 1973 before the Sessions Court at Bhandara. Investigation was completed and charge-sheet was filed by Bhandara Police. The learned Sessions Court had observed that offence has taken place within jurisdiction of Mumbai and not Bhandara and therefore, case was transferred to Mumbai and the application was rejected on 31/07/2015. Case was

transferred to Malwani and registered as crime no. 24 of 2015 for offence punishable under section 376 (2) (c) (n) r/w section 8 of Protection of Children from Sexual Offences Act, 2012. Case was then transferred to the Special Court, POCSO. The learned Sessions Judge has held that applicant has no permanent residence in Mumbai and that he may not be available for trial and therefore, application is rejected.

6) That the victim had left her house voluntarily. She was not abducted. According to her, she was working in Mumbai and had earned her living for two months. At the first instance, she has not alleged anything against present applicant. Only when it was revealed that she was carrying pregnancy, she has held present applicant liable for the same. The learned counsel for the applicant submits that in fact, it was applicant who had called her father to take her to Bhandara. At that time also, she had not disclosed to her father or the police about the act committed by the present applicant.

7) Perused the medical reports. The learned APP submits that the said pregnancy is terminated and samples were taken for DNA profile. DNA as far as present applicant is concerned, shows :

*“Male haplotypes obtained from ex.1 Product of Conception **failed to match** with male haplotypes blood sample of Sharif Ahemed Asgar Ali*

Idrisi in DNAn-184/15”.

8) Since prosecution has also relied upon the same, taking into consideration the material collected in the course of investigation, statement of the victim and the DNA report this Court is of the opinion that the applicant deserves to be enlarged on bail as he has been in custody since December 2015. 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. 25,000/- with one or more local solvent sureties in the like amount.
- (iii) Applicant shall report to Malwani Police Station on every Sunday between 10.30 am to 01.00 pm till the framing of charge.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)