

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.439 OF 2017

Parmeshwar S.Narake

...Applicant.

vs.

The State of Maharashtra

...Respondent.

Shri. Aniket Nikam i/by Chetan Damre for the Applicant.

Ms.A.A. Takalkar, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 13th September, 2017.

P.C.

1. This is an application under Section 439 of the Cr.P.C. for bail in Special Case No.67 of 2015 pending on the file of Special Court, Baramati, District Pune. The offence alleged against the applicant accused No.2 is under Section 376D, 506 and 363 of the I.P.C. and Section 4,6,8,12 of the Protection of Children From Sexual Offences Act. The victim was aged about 17 year and 10-months on the date of the alleged incident.

2. With a view to protect the identify of the victim girl and inconsonance with the provisions of Section 228A of the Indian Penal Code the name of the victim girl and the detailed narration of facts mentioned in the first information report is hereby avoided.

3. The first information report is lodged by the prosecutrix herself on 19.5.2015 alleging that on 18.5.2015 on the pretext to give job at

wedding reception the applicant and co-accused committed the aforesaid offence upon her. During the course of investigation, the police have arrested the applicant on 21.5.2015 and after completion of investigation submitted charge sheet.

4. Learned counsel appearing for the applicant submitted that medical report attached to the charge sheet does not support the contention of the prosecutrix vis a vis forcible sexual assault. He submitted that there are no injuries on the person of the prosecutrix which were noticed by the Medical Officer. He submitted that the prosecutrix was a consenting party to the said act. He therefore, prayed that the applicant may be released on bail.

5. It is well settled position of law as has been enumerated by the Hon'ble Supreme Court in the case of Aman Kumar And Anr vs State Of Haryana [AIR SC 1497], that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. That there is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of State of Himachal Pradesh Vs. Shree Kant Shekari [AIR (2004) SC 4404].

6. Perused the statement of the prosecutrix and the documents annexed to the charge sheet. In the opinion of this Court the statement of prosecutrix is trustworthy and reliable. The offence alleged against the applicant is gang rape as contemplated under Section 376D of the Indian Penal Code and is a heinous offence.

7. In view of the statement of the prosecutrix and other evidence available on record this Court is of the opinion that, the applicant does not deserve to be released on bail.

8. Application is accordingly rejected.

(A.S. GADKARI, J.)