

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1315 OF 2016

Kamlesh @ Pintu Chhotelal Gupta. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Sandeep Mishra, advocate for Applicant.

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

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : JANUARY 10, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 10/1/2016 in Crime No. 7 of 2016 registered at Vartak Nagar Police Station

initially for the offence punishable under Section 366 of the Indian Penal Code. After completion of investigation, charge-sheet is filed for offence punishable under section 376 of the Indian Penal Code.

3 It is the case of the prosecution that on 9/1/2016 Deepak Bharati lodged a report at the police station alleging therein that her eldest daughter Ms. X is about 22 years old. However, she is a special child, in as much as she lacks cognition and is mentally disturbed child ever since she was 7 years old. According to her, her daughter used to go to the house of Ankita. That on the day of the incident, she was searching for her daughter. She went to the house of Gopi Bora. By the time, the first informant had reached the house, her daughter had left the house of Gopi Bora. On 9/1/2016 one person had taken her in the rickshaw on the pretext of getting married to her. On the basis of the said report, Crime No. 7 of 2016 was registered for offence punishable under Section 366 of the Indian Penal Code.

4 The applicant is a rickshaw driver. The statement of the victim was recorded on 10/1/2016 and she had disclosed that on the date of the incident, she had been to the house of Ankita, where the husband of Ankita had ravished her. After she left the house, one rickshawala had taken her alongwith her. He had called upon the other rickshaw driver and they had committed rape on her. It is also alleged that thereafter, she was dropped at her own house. The victim has identified the applicant as the rickshaw driver who committed rape on her. The rickshaw driver has also given his cell phone number to the victim which she passed on to her mother and it was on the basis of the said cell phone the accused have been arrested.

5 It is unfortunate to state that the victim was examined by the department of neurological science at J.J. Hospital. The opinion of the Medical Officer reads thus :

“Current mental age as per performance and verbal score is 9-10 years. Hence, she is not able to understanding as per level of adolescents.

Needs attention and training for proper care and improvement.

- 1 Yes, Moderate mental retardation.
- 2 Moderate mental retardation.
- 3 Intellectual function as compared to normal people is 9-10 years of age.
- 4 Understanding poor as compared to normal people.
- 5 Less as per average memory.
- 6 Approximately 9-10 years of age.
- 7 Not able to understand the incident or any kind of abuse or injustice.”

6 The papers of the investigation would clearly indicate that the applicant herein has taken undue advantage of the state of mind of the victim and had ravished her. It is in these circumstances, that the application seeking enlargement on bail deserves to be rejected.

7 The observations made herein above are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of trial.

8 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)