

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

CRIMINAL BAIL APPLICATION NO. 885 OF 2016

Nagendra @ Gajni Hansraj
Nishad @ Choudhary. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Sachin Thorat, advocate for Applicant.

Mr. Arfan Sait, APP for State.

Mr. S.H. Biswas, API Police Station, Bhiwandi Taluka Police Station,
Thane (R).

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 22, 2017**

P.C.:

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

2 This is an application under section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 21/1/2015 in
Crime No. 12 of 2015 registered at Bhiwandi Taluka Police Station.
The investigation is completed and charge-sheet is filed against the

applicant for offence punishable under section 363, 376(d) read with section 34 of the Indian Penal Code and under section 3, 4 and 5 of the Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 11/1/2015 Ms. X lodged a report at the police station alleging therein that Parvez is residing in the same chawl as that of the complainant. There are two rooms. He resides in one room and other room is occupied by his parents. That the applicant and his other friends used to visit the room of Parvez. It is alleged that one day, the applicant had met the younger sister of the first informant and had given a cell phone in order to contact him. He had also given her SIM Card. The applicant herein had given a call on that cell phone. He had expressed his desire to marry her. She had not accepted the said proposal. That on 4/1/2015 at about 11 p.m. the present applicant had called upon the first informant on her cell Phone.

4 On 5/1/2015 she had been to the hospital in the close vicinity as she was suffering from cold and high fever. She returned from hospital. She had seen the applicant and his friend Izaz waiting for her. Thereafter, it is alleged that he had called her to room. She refused to talk to him. Under coercion, he had taken her on his motor cycle. She was taken to Green Hotel. It is alleged that there she was ravished by the applicant and his friends.

5 The learned Counsel for the applicant submits that the applicant has been falsely implicated only because a neighbour had seen Ms X talking to him. It is submitted that the incident is dated 5/1/2015 whereas the first information report is lodged on 11/1/2015. That there is delay in filing the FIR and there is no plausible explanation for inordinate delay in lodging the FIR. That the silence of the victim for more than 6 days speaks volumes for itself. It is also submitted that there is no injury certificate which would corroborate the allegations against the present applicant.

6 Perused the papers of investigation. Medical report of the victim shows that “no evidence of non penetrative assault. No evidence of injury to anus and evidence of sexual intercourse cannot be ruled out.

7 As far as the submission of delay in lodging FIR is concerned, this Court is of the opinion that in case of sexual abuse, the delay in lodging FIR would not be fatal to the prosecution as there are several constraints on the survivor before she approaches police station as this Court has held earlier that by lodging report, not only the victim but her family would be exposed to social obloquy and therefore, delay in lodging FIR is not fatal to the prosecution. This is a case of gang rape as alleged by the victim and as on today, there is no reason for the Court to disbelieve her allegation. Hence, the application being sans merits stands rejected.

8 However, it is made clear that the observations are prima facie and are restricted to the application under section 439 of the Code of

Criminal Procedure, 1973 and the same shall not be considered at the time of trial.

9 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)