

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1342 OF 2017

Harishankar Awadh Shukla @ Raj Shukla,
Age 34 years, Occ. Service,
R/o.Flat No.201, Varad Vinayak Society,
Sector-5, Kopar Khairne, Navi Mumbai

Applicant

versus

The State of Maharashtra
through Senior Police Inspector,
Nerul Police Station, Navi Mumbai

Respondent

Mr.Nitin Pradhan i/by Siddh Vidya for Applicant.
Smt.J.S.Lohokare, APP for State.
Smt.Rohini Salion with S.B.Bhatagunaki for Intervenors.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 26th July 2017

PC :

1. This is an application for bail in connection with CR No.I-390 of 2016 registered with Nerul Police Station, Navi Mumbai for offences punishable under sections 376(f), 376(2)(i), 376(2)(n), 506B of Indian Penal Code with Sections 4, 5F, 5L, 5J(2), 6, 8, 9F and 10 of Protection of Children from Sexual Offences Act, 2012. The applicant was arrested on 15th December 2016. The investigation is complete and charge sheet is filed.

2. The brief facts of the prosecution case are as under :

(a) The victim is a student of Standard-VII, in Mahatma Gandhi Mission School situated at Nerul, Navi Mumbai;

(b) The incident had allegedly occurred in the month of April-2016 when all the students of Class-7B were on the ground of the school for the physical education classes and the applicant was then a teacher in the said school had committed sexual intercourse in the class room and threatened the victim not to disclose the same to any other person;

(c) The victim had not gone for the classes of physical education as she had developed a stomach-ache and therefore, she preferred to be in the class room with one of her class mate named Komal. After some time, when Komal went to wash room, the applicant entered the class room and forced himself on the victim. He forced her towards the black board, put his hand on her mouth and then committed sexual intercourse with her. He threatened her of dire consequences. Under the fear, the victim did not disclose the incident to her friend Komal when she came back from the wash room;'

(d) As per the prosecution case, the second incident took place some where in the first week of August-2016 when the accused had committed sexual intercourse with the victim in the ladies wash room situated on the second floor of the building which houses a law college some where between 10.15 to 10.45 p.m. and he again threatened the victim not to disclose the incident to any one;

(e) Few days, complainant was having some health issues and she was not having food properly. She was taken to a doctor and after conducting sonography on her, it was found that she was pregnant. On that day, the mother of the complainant inquired about the same and the complainant disclosed that the accused had committed sexual intercourse with her and had also threatened her. The first information report ('FIR') was lodged on 29th October 2016.

3. The applicant preferred an application for anticipatory bail before Sessions Court, Thane. Said application was rejected on 14th October 2016. Thereafter the applicant preferred the application for anticipatory bail before this Court on 20th October 2016. However, during the pendency of the said application, the applicant was arrested on 15th December 2016.

4. The learned advocate for applicant Mr.Pradhan submitted that the applicant has been falsely implicated in the present case. There is no evidence to connect the applicant with the said crime. Immediately after the FIR was registered, the applicant had addressed various letters to Police to put him to DNA test as well as Lie Detector Test as he was innocent and he was arrested without being any evidence against him. He relied upon the copies of the documents which substantiates his submissions. It is submitted that the applicant also informed the police in writing that the mother of the complainant is trying to protect one boy for the reasons best known to her who has molested her daughter and in this regard he also forwarded an audio clipping to the police wherein the mother of the complainant can be heard disclosing about the fact that there is

one boy who had molested her daughter and one Pandey Sir knows about it but the police did not pay any attention to the said request. It is further submitted that even in the application for anticipatory bail which was preferred before the Sessions Court, it was submitted that the applicant is innocent and is ready to go for DNA test as well as Lie Detector Test. However, the application for anticipatory bail preferred by the applicant was rejected by Sessions Court on the ground that the crime is serious. It is further submitted that even in the application for anticipatory bail preferred before this Court, it was stated that the applicant is ready for DNA test as well as the Lie Detector Test. It is submitted that in order to ascertain the involvement of the applicant in the crime, the blood sample of the applicant-accused was collected after his arrest to match the same with the sample of foetus which was obtained from the complainant before the termination of her pregnancy which has resulted due to the sexual intercourse allegedly at the instance of applicant. The same was sent to Kalina Laboratory, at Santacruz. It is submitted that the wife of the applicant wrote several letters to various authorities for early DNA report. On completing the investigation, the police filed a charge sheet on 10th March 2017 which includes DNA report of the applicant. It is submitted that the DNA report clearly shows that the applicant is excluded to be the biological father of product of conception of Jyoti Vijay Singh (victim). It is further stated that Jyoti Vijay Singh is concluded to be the biological mother of the product of conception of Jyoti Vijay Singh. It is, therefore, submitted that the DNA report has completely absolved the applicant from being involved in the said crime.

5. It is submitted by the counsel for applicant that during pendency of the investigation, there were several demonstrations organized by political parties and the media had reported adverse opinions against the applicant. Even there were interviews on the TV shows and there was a trial by media. It is submitted that the Sessions Court while rejecting the application for bail, did not consider the scientific evidence in the form of DNA report. It is submitted that the DNA sample of the applicant did not match with the product of the conception of the victim and hence the entire story of the prosecution fails. It is submitted that the prosecution case is that the victim was pregnant on account of the forced sexual intercourse committed by the applicant. On account of the DNA report opining that the applicant is not the biological father of the product, the entire case of the prosecution must fail and therefore, the applicant deserves to be enlarged on bail. It is submitted that there are various contradictions in the statement of complainant (victim) and the other witnesses.

6. It is submitted that from the statement of Smt.Savita Gulati, Principal of MGM High School which was recorded on 12th December 2016 as well as on perusal of the time table of Class-7B, it can be seen that in the month of April-2016, the classes of physical training were assigned only on Saturday. As per the statement of said witness, the attendance record of the school which are part of charge sheet reveals that there were altogether about 19 working days from 4th April 2016 to 29th April 2016 for the students. The victim was present in the school on each and every working day. From 4th to 29th April 2016, there were three Saturday in the month of April on which the school was functioning for students. Out of

three Saturday, on the Saturday falling on 9th April at stipulated time when the alleged incident of rape had occurred, the applicant was taking classes in another class. As per proxy registry of school which is part of charge sheet, the applicant was teaching in Class-8A which is at the second floor of the school and the crime scene is on the third floor. As per the record, 9.55 to 10.10 a.m. is the lunch break. Therefore, there is no question of the applicant being present at the scene of crime. As per the proxy register, the next Saturday falling on 16th April 2016, the applicant was taking P.T.classes on the ground floor and hence he cannot be present at the place where the alleged incident had occurred. The Saturday is falling on 23rd April 2016, the applicant was absent as per the proxy record as well as the statement of the Principal of the school . It is further submitted that on perusal of statement of Komal Jadhav dated 14th December 2016, it appears that the school resumed on 4th April 2016 and after 10 to 20 days of opening, on one day she did not remember the date, the complainant and she was sitting in the class room during the P.T. classes as they were not well. She had gone to wash room and when she came back, she saw the complainant standing at the window in the class room. It is submitted that the statement of the witness recorded under Section 164 of Cr.PC; on 23rd December 2016 in which she is completely silent with regards to the averments made by her in her earlier statement. It is further submitted that the mother of the victim and the victim had concealed the name of the other boy who had molested the complainant for the reasons best known to them. The mother of the victim has stated in her statement that she did not disclose the name of another boy who had called her daughter. This fact was revealed only after she was questioned about an audio clipping and transcription thereof provided by the applicant

to the police. The said audio conversation had transpired before the registration of the complaint between the mother of the victim and the applicant. The said clipping contains the statement of the mother of the victim that one boy is harassing the victim and one Pandey Sir knows about the same. It is further submitted that as per the statement of Dr.Chetan Singh, when the said doctor asked the mother of the victim about the culprit, she was murmuring about cousin. Police did not investigate the said aspect and the involvement of the boy named Manish in the entire episode.

7. Learned APP vehemently opposed the application for bail. It is submitted that prima facie case is made out against the applicant which is supported by the statements of witnesses recorded during the course of investigation. It is submitted that the victim girl as well as other witnesses has established the involvement of the applicant in the said crime. The statement of the victim cannot be brushed aside only on the basis of DNA report. Learned APP relied upon the averments in the FIR which is the statement of victim, supplementary statement of victim and statement of victim recorded u/s 164 of Cr.P.C. It is submitted that in the said statements the victim has categorically attributed the role to the applicant-accused about committing the sexual assault on the two occasions. She pointed out the statement of one of the student namely Shreya Bhaumik which was recorded under Section 164 of Cr.P.C.. In the said statement, the said student has stated that she is the student of MGM High School and studying in VIIth standard. It is further stated that she is the class mate of victim. The applicant-accused was the English teacher. He used to crack objectionable jokes in the class. Most of the time he used to tell the jokes to the students and spent lesser time in

teaching the students. It is further stated by her that about 2 to 3 months prior to recording of her statement, the applicant-accused had caught hold of her hand and at that time she was scared. Prior to that, on 25th January 2016, the said student had celebrated her birth day and had distributed chocolate in the class. At that time also, the teacher had caught hold of her right hand and for a long time did not release her hand. The applicant-accused used to tell all the students that who ever studies well, will be treated as his right hand and he used to call the victim as his right hand. The applicant used to always catch hold of the hands of girls in the class. Learned APP further points out the statement of Smt.Shila Thapa who is also teacher in the same school. In her statement, it was stated that some where in 2014, she was leaving her class and at that time she saw one of the students Soniya Purushottam and questioned her as to why she was in the school till late hours. At that time the said student had informed that Shukla Sir had told her to wait. The witness has further stated that she was not happy about the conduct of the applicant-accused. Reliance was also placed on the statement of another teacher namely Kislay Nareshchandra, which was recorded on 16th December 2016 who also referred to the behaviour of the applicant-accused. Reliance is also placed on the statement of another student namely Mrunmayi Palav which was recorded on 16th December 2016 wherein she has stated that the accused used to tell the students objectionable jokes about kissing and nudity. Similar statement is also made by another student namely Sakshi Pawar wherein she has also stated that the said student and others had made oral complaint to the Supervisor of the school against the applicant-accused. It is further submitted that the applicant was absconding for about two and half months and was arrested at Delhi.

8. Learned APP further submitted that there are several statements of witnesses showing the conduct of the accused in the class. The girl students including the victim were hardly 13 years old. The behaviour and the conduct of the applicant-accused with them was highly objectionable. From the statements of those students, teachers and other witnesses, the version of the victim is corroborated. There is ample evidence on record to bring home the charges against the applicant-accused. It is submitted that the victim is a 13 year old girl. The applicant was a teacher in the school of the victim. The victim has categorically described the acts of sexual intercourse at the instance of accused. Considering the age of victim, the period during which the incident had occurred, it is not desirable that the victim should state the incident with minute details as to date and time of the same. It is further submitted that as far as DNA report is concerned, the same can be considered on merits while appreciating the evidence during trial. From the statement of victim, prima facie role of the applicant in commission of the offences is established. It is not necessary at this stage to go through the statement of the witnesses in minute details or to scan the said statements. It is submitted that on account of negative DNA report, the accused cannot be exonerated. The victim has described the incident in her statement. The fact that after the incident the accused had absconded and was hiding in the house of his relatives at Delhi cannot be overlooked. Considering the age of the victim, certainly there is likelihood of pressurization at the hands of accused. The offence committed by the applicant is very serious. The gravity and the magnitude of the offence will have to be considered and taking into consideration the circumstances, the bail cannot be granted to the applicant.

9. Learned advocate Ms.Salian appearing for the intervenor/victim submitted that the statement of the victim which was treated as the first information report as well as the subsequent statements has categorically named the applicant as the person who had committed the act of sexual intercourse. The victim is a girl aged about 13 years. She has no reason to falsely implicate the applicant-accused in the crime. The victim has clearly mentioned the two incidents by which the accused had committed sexual assault upon her. It is further submitted that the version of the victim is corroborated by the statements of various other witnesses including the minor children who are the students in the class of the victim girl who had depicted the objectionable behaviour of the applicant-accused. The accused has been charged for commission of the serious offence u/s 376 of Indian Penal Code as well as offences under the POCSO Act. It is submitted that the investigating officer Mr.Vasudev More, who was conducting the investigation at the initial stage, was biased and has conducted the investigation in a biased manner. He did not follow the rules and procedures prescribed under the POCSO Act during the investigation. The said officer pursuant to registration of FIR summoned the victim at the police station on several occasions and made her to sit in a separate room and her parents were asked to sit in another room and conducted interrogation of the victim and her parents for hours together. The said officer put forth questions which were assassinating the character of the victim. On account of the conduct of the said investigating officer, a complaint was lodged with the authorities on 25th November 2016 by an NGO namely Majlis with the Commissioner of Police, Navi Mumbai. It is submitted that the applicant had preferred an application for anticipatory bail before

this Court which came up for hearing on 7th December 2016. This Court while hearing the said application had noticed the conduct of the investigating officer. In the order dated 7th December 2016, this Court has observed that upon perusal of investigation papers, it is noted that the investigating officer has carried out investigation in casual manner. The statement of the witness viz. Komal appears to be recorded and produced before the Court which is dated 11th November 2016 and the same is not in proper form. It was also noted that though there is a reference of girl Shreya who happened to be the friend of the victim with whom the victim Jyoti used to sit, her statement was not recorded. The papers were taken into custody and the same were kept in a sealed envelope. The DCP of the concerned zone was directed to give his views as to whether he is in agreement with investigation. The report of the DCP was directed to be placed before the Court on the next date of hearing. The application thereafter came up for hearing on 20th December 2016 wherein it has been observed that pursuant to the order passed by the Court on the earlier occasion, the investigating officer is suspended in view of lapses. The statement was accepted, and papers which were taken into custody were directed to be handed over to APP with further direction to forward the same to the DCP of the concerned Zone. It is submitted that the statement of the doctor which is referred hereinabove by learned counsel for applicant wherein it is stated that victim's mother had referred to the involvement of the cousin brother was subsequently recorded after the investigation was handed over to another officer and in the said statement, the said witness has not referred to the alleged version of the mother of the victim which was appearing in the earlier statement.

10. It is submitted that there is ample material in the charge sheet against the accused in the form of statements of victim, students, staff and others and also statements u/s 164 of Cr.P.C. The prosecution is relying on the statement as well as statements of other witnesses such as Komal Jadhav, Smt.Aakangsha Dwivedi, student Shreya, student Dayan, Smruddhi Jadhav, Muniya Palav and various other students. It is submitted that the witnesses have stated that the applicant-accused used to teach less and used to pass vulgar jocks/comments, he used to hold hands of girl students for long time and showing them semi nude photographs, touching inappropriately on the shoulder, to make the students sit alone after school hours, watching dance practice of minor girl students without any invitation, cracking jocks of kissing and about nakedness of woman etc.. The aforesaid acts are referred to by the students in their statements which were recorded during the course of investigation. It is submitted that one of the teachers Smt.Shila Thapa has also stated that she had scolded one of the girl student named Sonali who used to sit alone in school after school hours. The statement of student Komal Jadhav supports the statement of victim with regards to the factual aspect of the incident. The statement of dance teacher Smt.Aakangshaa Dwivedi also discloses the behaviour of the applicant-accused towards the students of the school. It is submitted that the statement of one of the law student Faizan Ahmed also shows that the accused had come on the 2nd floor where the law college is situated on 12th August 2016. It is submitted that the police had investigated the story about the harassment by Manish to the victim. The police have investigated the said aspect thoroughly and statements were recorded and also investigated about the audio

recordings and no substance is found in the defence of the applicant-accused. It is submitted that the DNA report is subject to re-verification. The samples which were sent by police i.e. blood, semen, pubic hair and nails of the accused through letter of Navi Mumbai Municipal Hospital to the Forensic Lab at Kalina, the receiver in forensic lab has refused to take the sample of semen and returned to the police as per the report of police. As per the statement of police constable recorded on 20th December 2016 which forms the part of charge sheet, it is submitted that earlier I.O. Mr.Vasudeo Morey has been suspended for not carrying the proper investigation. It is submitted that the samples of DNA of the victim and the aborted foetus were sent to forensic lab at Kalina during the tenure of the suspended I.O. Mr.Vasudeo Morey. It is further submitted that the letters which were voluntarily sent by the accused, as contended by him, for lie detector test and suo motu paternity test, were sent after the samples of DNA and samples of aborted foetus were sent by Mr.Vasudeo Morey to the forensic lab. The investigation was transferred to Crime Branch on 10th December 2016 and thereafter fresh statements were recorded by new investigating agency. On perusal of the said statements recorded by Crime Branch, it is apparent that the investigation conducted by the Mr.Vasudeo Morey was biased and against the victim. It is further submitted that Sections 29 and 30 of the POCSO Act states that Court shall presume that when a person is prosecuted for committing or abetting or attempting to commit any offence U/s.3,5,7 and 9 of POSCO Act, the Court shall presume that such person has committed the offence, unless the contrary is proved. Section 30 reads that in any prosecution for an offence under the Act, which requires culpable mental state on the part of accused, the Court shall presume

the existence of such mental state, but it shall be a defence for the accused to prove the facts that he had no such mental state with respect to act charged as an offence in the prosecution. It is, therefore, submitted that from the statements of the victim and the witnesses it is clear that the accused has the culpable mental state for committing the offences charged against him. The statutory presumptions will have to be taken into consideration. Hence, the application for bail may be rejected.

11. I have perused the documents on record which is in the form of charge sheet. I have considered the submissions advanced by the learned counsel for applicant, learned APP as well as the learned counsel for the intervenor-victim. It is noted that the victim is 13 year old girl and was studying in 7th standard at the relevant time. The applicant is charged with serious offences u/s.376 read with Section 4, 5, 6, 8, 9 and 10 of POSCO Act. The applicant-accused was the teacher in the school of the victim at the relevant time. The victim has narrated the incidents of sexual assault by attributing a clear overt act to the applicant. There is no reason for the minor girl to falsely implicate the applicant in the said crime. There may be some contradictions or omissions in the statements of victim or other witnesses, however, it is pertinent to note that the victim has undergone a trauma as she was subjected to sexual assault which has resulted in her pregnancy. The entire family of the victim was under trauma on account of the incident. At this stage, there is no reason to disbelieve the statement of the victim girl. The statement of the friend of the victim namely Koral Jadhav corroborates the version of the victim in the statement recorded by police, wherein she has stated that on one day on account of stomach-ache, they were sitting

in the class and that she went to bath room and when she returned back from bath room, she saw the victim standing near the window. It may be that in the subsequent statement, the said witness has not deposed about the said version. However, the contradictions or the omissions in the statements can be looked into at the time of trial. There are consistent statements of the other students which depicts the objectionable behaviour of the applicant-accused who used to indulge in cracking adult jokes and also talking about nudity. The statements also speaks about the conduct of the applicant-accused that he used to hold hands of the girl students and also used to touch them on their shoulder. The statement also indicate about showing semi nude photographs to the students and narrating stories involving the nudity which outraged the modesty of girl students. The stand of the applicant that he has been falsely implicated in the crime or that DNA report is negative and absolves him from the crime or that there is a video clipping which refers to the version of the mother of the victim where she has referred to name of another boy from the class, can be considered as defences of the applicant which can be agitated at the time of trial. No doubt the DNA report states that the applicant is not the biological father of the product from the DNA sample. However, at this stage the version of the victim who is a minor girl aged about 13 years as well as behaviour of the applicant-accused which is referred to by in the statements of various students and teachers, cannot be brushed aside. The conduct of the accused narrated by the other students, supports the case of the victim that there is possibility that the accused has indulged in such activity. The version of the victim, therefore, cannot be overlooked at this stage. It appears that at the initial stage, the investigation was conducted by Mr.Vasudeo Morey which has been

deprecated by this Court and thereafter the investigation was transferred to another officer. The statements of the witnesses need not be gone into in minute details. Only on account of negative DNA report, the applicant cannot be absolved of the crime. The victim has described the acts giving specific role to the applicant-accused. This is not the stage to scan and/or appreciate the evidence. The applicant was arrested after about two and half months. The victim is minor girl aged about 13 years. The gravity and magnitude of the offence has to be taken into consideration while granting bail to the accused. The applicant is charged with serious crime. Prima facie there is evidence on record to show his involvement in the crime. Considering all these aspects, I am not inclined to grant bail to the applicant.

12. Hence, I pass following order :

ORDER

- (i) Bail Application No.1342 of 2017 is rejected;
- (ii) It is clarified that the observations made in this order are only for considering the application for bail and the Trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)