

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1889 OF 2017

Tulshiram Gopal Manere

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. B.G.Tangsali for the applicant.

Ms.Veena Shinde, APP for the State.

CORAM: A.M. BADAR, J.

DATED: 8th NOVEMBER 2017

PC:-

1. The applicant/accused in Crime No.I-201 of 2016 for offences punishable under Sections 376,323,506 of the Indian Penal code and Section 8 and 12 of Protection of Children from Sexual Offences Act, by this application is seeking his release on bail during the pendency of the trial.

2. Heard the learned advocate appearing for the applicant/accused. By pointing out the FIR lodged by teacher of the school the learned advocate argued that the FIR itself discloses the fact that the alleged offence was taking place from June 2016 but the report thereof came to be lodged on

24.12.2016. This delay in lodging the FIR indicates false implication of the applicant/accused in the crime in question.

3. The learned APP opposed the application.

4. I have carefully considered the rival submission and also perused the entire charge-sheet.

5. The victims of the crime in question are stated to be two minor female children aged about 8 years and 10 years. The applicant is the driver of the vehicle by which both the minor female children were going to the school and coming back from the school in which they were taking the education.

6. Because of irregular attendance of both the minor female children in the school, their teacher i.e. first informant Pooja Choube questioned them in December 2016. The first informant teacher noticed that both the female children were in a frightened state. After they were taken in confidence they

narrated to the first informant that the driver of the vehicle in which they undertook to and fro journey to the school is behaving indecently with them from June-2016. The first informant teacher was informed by one of the female child that the driver of the vehicle used to denude her and tie her hands and used to do obscene acts with her. The teacher was also informed about commission of sexual intercourse by the driver of the vehicle to whom the victims have referred to as "gadiwala uncle". This is how the FIR came to be lodged against the present applicant who is, according to the prosecution case, "gadiwala uncle".

7. In rape cases and particularly, in the matter of sexual assault on minor female child, the delay in lodging the FIR is of no consequent. The child psychology prevents the victim in disclosure of her suffering to others. During the course of investigation, the statement of the minor female children are recorded in question-answer form. Those statements reflect penetrative sexual assault by the present applicant on them.

The medical examination of the minor female children does not show that the attending medical officer found their hymen torn. However, tearing of hymen is not a sign of qua for the offence of penetrative sexual assault.

8. Considering the nature and seriousness of the offence alleged against the present applicant, no case is made out for grant of bail. Hence the application is rejected

9. The learned Trial Court is requested to expedite the hearing of the Sessions Case and not to get influenced by observations of this Court, which are prima facie in nature.

(A.M. BADAR, J)