

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1846 OF 2016

Sagar Dilip Sawant	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr.Ms. Anjali Patil a/w Mr. Arun Rajput, Advocate for the applicant.

Mr. Arfan Sait, APP, for the State.

psi Aghav A.P. Navghar Police Station, Mumbai present.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 16th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.

The applicant herein is arrested on 29.3.2016 in Crime No.68 of 2016 registered at Navghar Police Station. The investigation is completed and charge-sheet is filed against the applicant and other in June 2016 for the offences punishable under Sections 376, 354D, 328, 506 read with Section 34 of the Indian Penal Code and Sections 4, 6 and 8 of Protection of Children from Sexual Offences Act.

2. It is the case of the prosecution that on 29.3.2016, Ms`x' lodged a report at the police station that she was in love with co-accused Darshan Pawar. She had physical relations with Darshan Pawar. They used to meet at various places. The present applicant happens to be a friend of

Darshan Pawar. It is her case that the applicant had cautioned her against Darshan and had also proposed to her. It is alleged by the first informant that Sometime in April, 2015 after Darshan had deserted her for a while, the applicant had met her. He had taken her to Deep Rekha Building. He had offered cold drinks. That she felt dizziness after consuming the same. According to her, the applicant had taken undue advantage of her state of mind and had sexual intercourse with her. Thereafter, he threatened her that she should not disclose the said incident to anybody. She had further alleged that Darshan had called her to Mhada Building and there he had sexual intercourse with her. Darshan had asked her to commit suicide. It is also alleged that the applicant had taken her to the house of another friend Dinesh Patil. There he had intercourse with her. According to her, the applicant had taken her to building No.29, New AMGP, Mhada Colony, Mulund and there the applicant used to administer spurious substance to her and used to have sexual intercourse with her.

3. The statement of the victim has been recorded under Section 164 of Cr.P.C. She has stated in her 164 statement that the present applicant used to offer her cold drink mixed with some spurious substance and forced her to have sexual intercourse with her. In her statement under Section 164 of Cr.P.C. she has stated that the present applicant had

informed her that Darshsn also wants to have physical relations with her. Thereafter, she had sexual intercourse with Darshan. It is further stated on oath that on 27.7.2015, she was taken to a hospital by Darshan. It was diagnosed that she had conceived pregnancy. Her parents had learnt about her affair with Darshan in June 2015. On 28.7.2015, they had also taken a proposal of marriage to Darshan's house. He flatly refused to marry her on the ground that he does not like her behaviour. On 31.7.2015, she had questioned about her pregnancy. She had disclosed to her parents about her pregnancy. She was beaten by her parents and thereafter she was taken to a doctor and pregnancy was aborted on 1.8.2015.

4. The learned counsel for the applicant submits that it is not the case of the prosecution that the complainant had met the present applicant after 1.8.2015. In the proforma under Section 154 of Cr.P.C. the offence is shown from 15.4.2015 to 17.12.2015. Needless to reiterate that the first information report is lodged on 29.3.2016. There is discrepancy in the allegations in the FIR and the statement which is recorded under Section 164 of Cr.P.C. It appears from the records and the statement under Section 164 of Cr.P.C. that the first informant had love affair with Darshan and therefore her parents had taken a proposal of marriage to Darshan's house.

The complainant has given the address of Mhada Building. The statement of Nandkumar Chavan, who is the owner of the said room is recorded in the course of investigation. He has specifically stated that no such incident could have occurred in his house and Mandlik is the caretaker and in the eventuality of any misbehaviour on part of Darshan or Sagar, Mr. Mandlik would have informed him. The investigating agency has not recorded the statement of Mr. Mandlik. The learned counsel for the applicant submits that while lodging the FIR, the complainant has shown her age as 19. The date of birth of the victim is 2.3.1997. In the first information report, she has specifically stated that the applicant had met her only after 2015 i.e. only after she completed April 2015 i.e. after she completed 18 years of age. In order to attract the provisions of POCSO Act, the supplementary statement of the victim was recorded on 7.4.2016 wherein she had stated that from January 2014 to 17.10.2015, she was abused by Darshan in the room at Mhada Colony. As far as the applicant is concerned, she has met him only after 2015.

5. Be that as it may, taking into consideration the fact that the applicant is in custody for more than one year, the investigation is completed and charge sheet is filed, discrepancy in the statement of the

victim, the delay in lodging the FIR and the fact that she has specifically stated under Section 164 of Cr.P.C. that she had not met the applicant after 1.8.2015, the applicant deserves to be enlarged on bail.

6. The observations are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration at the time of deciding application for quashing, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on first Sunday of each month till framing of charge.
- (iv) The co-accused Darshan Pawar shall not claim parity with the present applicant.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)