

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2079 OF 2017

Sunil Vitthal Shinde.	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

....

Mr.Prashant G.Sawant , Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

Mr.S.K.Nimbalkar, PSI ,Kanjurmarg police station.

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CORAM : A.M.BADAR J.

DATED : 16th NOVEMBER 2017.

P.C. :

1. The applicant/accused in Crime No.84 of 2017 for the offences punishable under Sections 376 of the Indian Penal Code and under Section 6, 10 and 17 of the Protection of Children from Sexual Assault Act, 2012 (herein after referred to as 'POCSO' for the sake of brevity.) is seeking his release on bail.
2. Heard the learned advocate appearing for the applicant. He drew my attention to the FIR of Crime No.112

of 2015, lodged by Ms. Surekha Bhagyawant, step mother of the victim female child to point out that after 30.8.2015 the victim female child was with the Children Welfare Committee. In Crime No.112 of 2015, her statement was recorded, but she has not uttered anything against the present applicant by pointing out the FIR lodged by the victim female child on 5.6.2017, the learned Advocate for the applicant has submitted that the period of alleged sexual exploitation mentioned in the said FIR covers the period during which the first informant was with the Child Welfare Committee. It is further argued that the first informant is habitual to the sexual intercourse as seen from the FIR of Crime No.112 of 2015 lodged by her step mother. She had not stated anything against the present applicant at the first possible opportunity. The learned advocate further drew my attention to the statement of Mrs. Parmar to submit that alleged sexual exploitation of the first informant is after registration of the earlier FIR by her step mother. With this, it is argued that after completion of investigation,

custodial detention of the present applicant is not warranted. The learned APP opposed the present application by contending that helpless orphan child was subjected to sexual exploitation by taking advantage of her penury as well as the situation in which she was living. For this purpose, the learned APP drew my attention to the FIR lodged by the first informant.

3. I have carefully considered the rival submissions and also perused the entire charge-sheet.
4. The FIR came to be lodged by minor female child on 5.6.2017 with an averement that her age is 16 years. At that time she was with the Child Welfare Committee. During the investigation, the prosecution has collected her school leaving certificate issued by the Municipal School showing her date of birth as 15.12.2000. This indicates that even at the time of lodging the FIR the first informant was the child as defined by the POCSO.

5. The FIR lodged by the victim female child shows that since her childhood her biological mother had abandoned her. She used to stay with her father and step mother named Surekha. On 24.1.2012 her father died. She continued living with her step mother Surekha. The first Informant disclosed that Kamal is sister of her step mother Surekha. The first informant further stated that her step mother Surekha used to take her to the house of Kamal and the present applicant used to reside near house of said Kamal and he is having shop named "Priyanka Dresses".
6. As per version of the first informant, in the year 2014 as Kamal was residing alone, her step mother Surekha used to sent her to the house of Kamal in the night hours for sleeping in order to accompany her. As per version of the first informant, during that period, the present applicant used to harass her by touching her breast and body. She protested and disclosed this to her step mother Surekha and then such incidents decreased in frequency.

7. The first informant referred about the FIR lodged by her mother on 30/8/2015 against Madhu and Akash. FIR of step mother Surekha dated 30.8.2015 shows that the victim female child was found by her in the company of accused therein namely, Madhu on 30.8.2015, at the house of co-accused Akash.

8. Because of the FIR dated 30.8.2015, relations of the first informant with her step mother Surekha became sour and therefore, she was constrained to join company of Kamal. She averred that then Kamal asked her to work in the shop of the present applicant. She stated that applicant Sunil used to stay at the house of Kamal in night hours frequently and on some occasions he used to come to the house of Kamal. At that time as per version of the first informant, the present applicant used to molest her. The first informant further reported that in November or December 2015, the present applicant with the active assistance of Kamal denude her and committed rape on her.

She further reported that because of her financial and social condition she was compelled to work with the present applicant subsequently also and she was unable to find out a person who might have help her.

9. Report lodged by the first informant further shows that she left the house of her step mother on 29.1.2016. Her FIR further shows that she ultimately took shelter of the Child Welfare Committee on 1.2.2016. She averred that period of her sexual exploitation by the present applicant is ranging from the year 2014 to November and December 2015.

10. The FIR lodged by Surekha in the year 2015 is in respect of alleged affair between the victim female child with a boy named Madhu. It has no relevance with the acts done by the present applicant with her. The Child welfare Committee has informed the Senior Inspector of Police vide letter dated 30.5.2017 that the first informant is under their protective custody and she has disclosed that a person

named Sunil has also sexually abused her on various occasions. Statement of Mrs. Parmar also shows that recitals of the first informant to her regarding the misdeeds of the present applicant.

11. Prima facie it is seen that the first informant, who at the relevant time, was a minor female child was subjected to aggravated penetrative sexual assault by the present applicant taking advantage of the fact that she is an orphan child and victim of the circumstances. Considering the situation in which the first informant was leading her life, it was not expected of her to approach the law enforcing agencies. The case of the prosecution in such factual situation is required to be considered under broader perspective rather than indulging in minor variations and lapses.

12. Considering the nature of the Crime and the circumstances in which it was committed, no case for bail is

made out. The application is therefore rejected.

13. Needless to mention that the observations made in this order are prima facie in nature and shall not have any bearing on the result of the trial.

(A.M.BADAR J.)