

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2117 OF 2017

Devendra Bansraj Singh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.S.G.Kudle for the applicant
Ms.Veena Shinde, APP for the State.
PSI G.L.Shinde , API Prasad Waghore Police Station Cuffe
Parade

CORAM: A.M. BADAR, J.
DATED: 9th NOVEMBER 2017

PC:-

1. The applicant/accused in crime No. 44 of 2017 for the offence punishable under Section 354-A, 376(2),(f) and (i), 506,509 of the Indian Penal Code under Section 6,10 and 12 of the Protection of Children from Sexual Offences Act, By this application is seeking his release on bail after filing of the charge-sheet.

2. Heard the learned advocate appearing for the applicant/accused. He drew my attention to the statement of the minor female child recorded by the learned Additional

Chief Metropolitan Magistrate, Mumbai on 23.6.2017 and argued that the minor female child has not averred anything against the present applicant in order to infer commission of the alleged offence. The learned advocate argued that in fact a false complaint is lodged against the applicant with the intervention of the NGO. The learned advocate argued that the first informant i.e. alleged female victim of the crime in question does not know and understand Marathi and therefore, the FIR is not as per her version. It is further stated that the victim female child may be called in the Court for inquiring the incident from her in the chambers of the judge.

3. The learned APP opposed the application by drawing my attention to the statements of relatives of the first informant, who were inmates of her house. She drew my attention to the statement of teachers of the first informant and opposed the application.

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

5. The crime in question is registered on the basis of report lodged by the prosecutrix on 18.4.2017. She is a female child aged about 16 years taking education in Colaba Municipal Secondary Hindi Medium School. The lodgement of the FIR has some history and it is apposite to quote the same prior to dwelling upon the FIR lodged by minor female child.

6. Ambarsingh Sukhdeo Magar, is the head master of the school, where the first informant female child was taking the education in 10th Standard at the relevant time. The statement of Ambarsingh Sukhdeo Magar shows that on 18.4.2017 at about 10.00 a.m. the first informant came to his cabin and told him that her father is doing outrageous things against her. Despite repeated queries by this Head-master, the first informant was not disclosing further information to him. Therefore, Ambarsingh Sukhdeo Magar, Head-master of

the school referred the first informant – the minor female child to a lady teacher named Freyaz Shroff. Statement of Freyaz Shroff shows that she made inquiry from the minor female child. It is stated by Freyaz Shroff that the minor female child told her that her own father is indulged in her molestation since last 4 to 5 years but because of fear of her father as well as mother she had not disclosed the incident.

7. Suresh Rampal Gupta is a Tutor from whom the first informant was taking tuition. His statement recorded by the investigators shows that he had noticed the first informant under pressure. The first informant informed him that her father is indulging in her sexual exploitation. Suresh Gupta then telephonically called father of the first informant. He met the father of the first informant i.e the present applicant and disclosed the recitals of the first informant to him. Statement of Suresh Gupta shows that the father of the first informant i.e the present applicant told Suresh Gupta that his daughter is telling a lie.

8. On the backdrop of this, the FIR lodged by the first informant /alleged victim of the crime in question shows that her father i.e. the present applicant used to indulge in sexual assault to her since past several years. The first informant has categorically stated that when she was taking education in 7th the Standard and was alone in the house with the present applicant, the present applicant committed rape on her. The first informant further reported that on 5.2.2017 she protested the advances of her father i.e. the applicant and warned him that she would lodge the report. However, her father did not mend his behaviour and therefore, she disclose the incident to her teachers. Then the subject FIR is lodged.

9. The offence is not necessarily required to be proved by the evidence of the victim of such sexual offence. It can be proved even by examining other witnesses as well as by adducing circumstantial evidence.

10. Holding of the mini trial before this Court as proposed by the learned advocate for the applicant is not advisable when the matter is pending for the trial.

11. In the light of this position of the law, subsequent U turn taken by the first informant i.e minor female child prima facie appears to be for protecting her father. It at the most shows tampering of the evidence of the prosecution. Apart from the evidence of the first informant- daughter, there is other evidence against the applicant on which the prosecution can rely in the matter. Considering the nature of the evidence and the circumstances, in which it was committed, no case for bail is made out. The application is therefore, rejected.

(A.M. BADAR, J)