

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2044 OF 2016

Mr. Pratik Rasiklal Shah	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr.Sandesh Patil i/b. Ms. Anusha P. Amin,Advocate for the applicant.
Mr.Arfan Sait,APP, for the State.
Mr. S.G.Rathod, H.C.Bhayander Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 22nd March, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 1.9.2015 in Crime No.171 of 2015 registered at Bhyander Police Station. The investigation is completed and charge-sheet is filed under sections 376, 366A, 323, 504, 506 read with Section 34 of the Indian Penal Code, under Sections 4 and 8 of the Protectino of Childrren from Sexual Offences Act, 2012 and under Sections 4 and 6 of the Protection of Child Marriage Act. Perused the papers of investigation

2. On 30.6.2015, a minor girl Ms `X' was seen by one person near a temple. It appeared to that person the girl was lost or was in some difficulties and could not converse with the stranger and therefore he had

left her at the police station. At the police station also the girl could not converse as it appeared that she was passing through a stage of depression. The police had shown some sensitivity by calling a lady probationer officer and had recorded the statement of the girl in the presence of PSI Shwetembri Patil of Nagpada Police Station. Ms. 'X' had even disclosed that on 27th April, 2015, her mother i.e. Sampada Kachve (absconding accused) had taken her to the house of one Pratik (she did not know the full name) at Gujarat. The girl did not know where she was taken. At the given place, she was made to marry Pratik i.e. the present applicant and thereafter her mother and brother had left for Bidar, State of Karnataka. She had stayed with the applicant at Gujarat for one week and thereafter, he had brought her to Mumbai i.e. at Bhayander. He had forcible sexual intercourse with her as according to him, he was married to her. She was sexually abused under coercion. She was physically assaulted by the applicant and therefore in the month of May, she had managed to flee from his clutches and had reached to the house of her sister who was residing at Bidar. From reliable sources her mother had learnt that she had fled from the house of the applicant and therefore she had taken the girl once again to the house of Pratik and had threatened her that if she would attempt to flee, she would be eliminated. Thereafter, the applicant is alleged to have

assaulted her with kick and fist blows. Once again, he had forcible intercourse with her. In June, she had managed to flee from his clutches. She had taken a train and reached Mumbai. On the basis of her report, Crime No.312 of 2015 was registered at Bhyander Police Station. Some of the accused had been enlarged on bail. However, the mother of the victim girl is absconding. Her brother Sachin is also absconding.

3. The learned counsel for the applicant on the basis of the supplementary statement of the victim, vehemently urged that in fact the marriage was settled. That there were talks between the relatives of the applicant and the mother of Miss 'X'. It is also submitted that in fact his brother-in-law after the demise of the sister of the applicant had entered into a second marriage with a girl from Solapur. by marriage a second time and his wife is from Solapur. It is through her that he had got married to "X".

4. The Court cannot be oblivious of the fact that the age of the applicant at the time of incident was about 35 years old, whereas the girl was hardly 15 years old. The ossification test would indicate that the victim was about 15 to 17 years old. She was a minor at that time.

5. The learned APP submits that there is material to infer that in fact, the girl was sold by her mother to the present applicant. The learned

counsel for the applicant reiterates that at the most it could be a child marriage and the possibility that the marriage against her wish may not be ruled out due to which she deserted her husband.

6. Upon perusal of the material, it is clear that this is not a case of child marriage but unfortunately the mother of the minor girl had forced her daughter to get married to the present applicant under coercion for vested interest which, according to the learned APP, can be monetary gain.

7. The learned counsel for the applicant has also drawn attention of this Court to the statement of the accused-applicant after he was arrested. It is submitted that the applicant was given an impression that the girl had attained majority and therefore he had agreed to marry her. According to the learned counsel, it could be a case under Section 498A of IPC.

8. Upon perusal of the papers of investigation, it is more than clear that the victim girl was forced to succumb to the sexual desires of a man at the hands of her biological mother. The applicant was more than double her age and therefore no case of child marriage can be made out. It is in these circumstances the applicant does not deserve to be enlarged on bail. The application being sans merit, stands rejected.

(SMT. SADHANA S.JADHAV, J.)