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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2432 OF 2017

Sudhir Shivaji Lohar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Nikhil Wadikar i/b Ekta Awachar for Applicant.

Mr. S.R. Agarkar, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 13th NOVEMBER 2017

P.C.:

1] This is an application under Section 439 of Cr. P.C. for bail in CR No. 136 of 2016 dated 11.04.2017 registered with Mayani Police Station, Vaduj, District- Satara under Section 376, 354, 506 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act).

2] The first information report is lodged by the minor victim girl aged about 14 years. With a view to protect the identity of the victim girl and in consonance with the provisions of Section 228(A) of the Indian

Penal Code, detailed narration of facts mentioned in the first information report and in the statements of the witnesses is hereby avoided.

3] It is the prosecution case that, the applicant is the distant relative of the first informant/victim girl and was also her coach for Taekwando. That by taking undue advantage of his position, the applicant had sexually assaulted the first informant on various occasions by giving threats to her that he will kill her mother. The first information report itself mentions that, prior and after commission of the said act, as contemplated under Section 376 of the Indian Penal Code the applicant administered threats to the life of victim girl and her mother and therefore victim girl did not divulge the said information to her close relatives immediately. When it was unbearable to the first informant to submit to the repeated demands of the applicant, she lodged the first information report. During the course of investigation, the applicant came to be arrested and after completion of investigation, police have filed the chargesheet.

4] At this stage, a useful reference can be made to two decisions of the Supreme Court namely (i) AIR 1983 SC 753 in the case of Bharwada B. Hirjibhai Vs. State of Gujarat and (ii) (2004) 8 SCC 153 in the case of State of H.P Vs. Shree Kant Shekari.

In the case of *Bharwada B. Hirjibhai (supra)*, the Supreme Court has held as under:

“A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

In the case of State of H.P. Vs. Shree Kant Shekari (supra) the Supreme Court in paragraph Nos.18 and 21 has held as under:-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of

the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle. These aspects were highlighted in [Tulshidas Kanolkar v. State of Goa.](#)”

21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.”

In the present case, a bare perusal of the first information report and the statement of the victim girl appears to be trustworthy and reliable. The medical evidence on record also duly corroborates the version of the victim girl.

5] After taking into consideration the ratio laid down by the Supreme Court in the aforesaid decisions, as far as the delay in lodging the FIR is concerned, according to me does not hold any substance in it. It appears from the FIR that the complainant has properly explained the delay in lodging the present FIR. It is to be noted here that the complainant after being fed up by repeated sexual assaults at the hands of the applicant herein ultimately gathered courage and has lodged the FIR. The complainant in her FIR has categorically stated that the after commission of the said act, applicant administered threats to life of victim girl and her mother and therefore victim girl did not divulge the said information to her relatives immediately. When it was unbearable to the first informant to submit to the demands of the applicant, she lodged the first information report.

6] After taking into consideration the material available on record, the serious allegations against the applicants and the gravity of the offence, this Court is of the view that, I am of the opinion that the applicant does not deserved to be released on bail and the application is accordingly rejected.

(A.S.GADKARI, J.)

--At this stage, a useful reference can be made to the the decision of the Supreme Court in the case of Aman 2004 SC 1497 and 4404, and Bharwada B. Hirjibhai Vs. State of Gujarat reported in AIR 1983 SC 753 : 1983 Cri. L.J. 1096 wherein the Apex Court held that, A girl or a woman in the tradition bound non-permissive society of Indian would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. That corroboration is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complaints of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated Society.

