

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2245 OF 2016

Sunilkumar Dukhiram Nirmal ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Ms. Anjali Patil, Advocate for the applicant.

Ms. J.S.Lohokare, APP, for the State.

Mr. Rajendra Zepe, PI, Nehru Nagar Police Stn. present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 20th March, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 11.6.2016 in Crime No.129 of 2016 registered at Nehru Nagar Police Station for the offences punishable initially under Section 363 of the Indian Penal Code. The investigation is completed and charge sheet is filed against the applicant for the offences punishable under Sections 376, 366, 366A, 342, 506 of the IPC. read with Sections 3, 4, 6, 8, 12 of POCSO Act.

2. It is the case of the prosecution that on 10.6.2016, Satyavan Adsul lodged a report at the police station that his minor daughter who is aged about 16 years old has been kidnapped by some unknown persons. Hence, an offence punishable under Section 363 of the Indian Penal Code. That

his daughter returned home and thereafter she was taken to the police station and her statement was recorded. She disclosed to the police that she is in love with one Sunil Londhe. She used to meet him quite often. On 9.6.2016, she was in the company of her friend Sunil at about midnight. Her parents were searching for her. They had seen her talking to Sunil. Therefore, she concealed her presence. Sunil had left her alone. A rickshaw driver had approached her. He made her sit in the rickshaw forcibly. He had taken her to a place wherefrom she was taken by another rickshaw driver who had taken her home. It is alleged that he had ravished the victim against her wish. Thereafter he treated her with dry-fruits and other fruits. On the next day, he had given her clothes to wear and had informed her that some lady passenger had forgotten the clothes in the rickshaw. She has changed her clothes. Thereafter, he had given Rs.100/- and then they had gone for shopping. He had purchased new clothes and footwear for her and thereafter he had asked her to go home. Upon enquiry, he had informed that his name is Sunil.

3. The learned counsel for the applicant submits that the medical history does not corroborate the narration of the victim. It does not show that she had any recent sexual intercourse. She had not disclosed the place from where she was taken. It is also submitted that the victim had not given

the registration number of the rickshaw nor the address where she was taken. Despite that, according to the learned counsel, the applicant was arrested on the very next day. She had not even mentioned the full name of the applicant and only because his name is Sunil, he has been arrested. It is also submitted that after receipt of the application, the survivor has shown the house of the applicant.

4. The learned counsel for the applicant has drawn the attention of this Court to the statement of Sunil Londhe, who happens to be her boyfriend and he has stated that at the relevant time, when she had gone missing, he had not met her throughout the day nor at night. It is submitted that there is no cogent material against the applicant.

5. The learned counsel for the applicant further submits that although she has named the name of the applicant is Sunil, she has stated before the doctor the name of the person who ravished her is Suresh. It is also submitted that the applicant had dropped her at Kurla Railway Station. The learned counsel further submits that the injury certificate does not show that the victim had any injury on her person. There is no evidence relating to non-penetrative assault. No evidence of injuries suggesting the application of force or restraint. The learned counsel for the applicant has also placed implicit reliance upon the opinion of the medical officer which

is as under :-

“Overall finding is consistent with old sexual intercourse/assault”

6. Be that as it may, taking into consideration the material collected during the course of investigation and the submissions advanced across the Bar, this Court is of the opinion that prima facie, the applicant has made out a case for bail. He is in custody since 11.6.2016.

7. The observations herein are restricted to an application under Section 439 of Cr.P.C. and the same shall not be taken into consideration for the purpose of quashing application, 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 local 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.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)