

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2497 OF 2017

Chetan Ravikant Karkera ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Amit P. Ghag, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 7th DECEMBER 2017.

P.C. :

1 The applicant/accused in Special Case bearing No.69 of 2014 arising out of Crime No.139 of 2014 registered with Kurar Police Station for offences punishable under Sections 363, 328, 376 read with 34 of the Indian Penal Code and Sections 25 and 6 of the Juvenile Justice Act, by this application, is seeking his release on bail during pendency of the trial.

2 Heard the learned Advocate appearing for applicant/accused. He argued that the applicant has undergone pre-trial detention of three and half years. He further argued that

at the first instance, the alleged victim of the crime in question has only submitted about her kidnapping and forcible administration of liquor to her by the applicant and other accused persons. However, subsequently, she came up with a version that there was sexual intercourse with the applicant at one occasion, which was six months prior to the incident in question. This, according to the learned Advocate for the applicant/accused, is not probable version because at that time, the applicant/accused was in judicial custody in Criminal Case No.2288/PW/2013.

3 The learned Additional Public Prosecutor opposed the application by contending that statements of victim female child, her sister Jaya and her friend Panchshila pointed out that the victim female child is kidnapped by the accused, who was forcibly administered intoxicating substance by the applicant and co-accused. The learned Additional Public Prosecutor further argued that supplementary statement of minor female child shows that the applicant has committed penetrative sexual intercourse with her.

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

5 The victim of the crime in question is a female child aged about 16 years as per the prosecution case. The crime in

question is registered on the basis of report lodged by her sister Jaya on 15/04/2014. The FIR, statement of minor female child as well as her friend named Panchshila congruously show that the minor female child accompanied by her mother had been to Kranti Nagar Sqaure for taking part in the procession on occasion of Ambedkar Jayanti on 14/04/2014. The present applicant met the minor female child in that procession after her mother left. She was offered Thumbs Up for drinking by the present applicant. After drinking Thumb Up, she suffered giddiness and then returned to her house accompanied by Panchshila. The minor female child as well as Panchshila have stated to the police that when the minor female child was opening the lock of the house, the present applicant came and took the minor female child forcibly.

6 Ajay – neighbour of First Informant Jaya had disclosed forcible taking of the minor female child by the present applicant to her sister Jaya, who lodged the FIR. Accompanied by police, Jaya went to the spot, which was near the tower and found the minor female child weeping.

7 This is the first version of the incident stated by the minor female child. The incident in question happened in the night intervening 14/04/2014 and 15/04/2014. The incident was that of kidnapping of minor female child and forcing her to consume liquor. She was found having dinner with the applicant and his friend at the tower in the locality. It is not alleged that at that time she was sexually exploited.

8 However, the question which falls for *prima facie* consideration is whether there was penetrative sexual assault on the minor female child six months prior to the incident in question. In supplementary statement recorded after 12 days of the incident, the minor female child has vaguely stated that six months earlier to the incident, she had physical contact with the present applicant. The incident as indicated took place in the midst of April 2014. The copy of Judgment and Order passed by the learned Metropolitan Magistrate, 67th Court, Borivali, Mumbai in Criminal Case No.2288/PW/2013 shows that the applicant/accused was in jail since the date of his arrest i.e. 12/08/2013 till his release on 13/03/2014. The alleged incident of kidnapping the minor female child took place after one month from release of the applicant from judicial custody after his conviction. He was in jail right from 12/08/2013. Obviously, therefore, six months prior to the incident in question, the applicant was undergoing his pre-trial detention. Thus, the element of improbability creeps in the prosecution case regarding the penetrative sexual assault and rape. It was not even the first version of the incident nor such penetrative sexual assault took place at the time when the alleged victim of the crime in question was kidnapped.

9 The evidence regarding age of the minor female child is also in dispute. The Medical officer has opined her age to be of

16 to 17 years. She herself as well as her sister Jaya stated her age as 16 years. Certificate issued by the school is stating some other age. Considering the nature of evidence in respect of alleged penetrative sexual assault committed by the present applicant, after undergoing pre-trial detention for about three and half years, I do not see any reason to extend the said pre-trial detention of the applicant by refusing bail to him. Therefore, the Order

- (i) The application is allowed.
- (ii) The applicant/accused in Special Case bearing No.69 of 2014 arising out of Crime No.139 of 2014 registered with Kurar Police Station for offences punishable under Sections 363, 328, 376 read with 34 of the Indian Penal Code and Sections 25 and 6 of the Juvenile Justice Act, is directed to be released on bail on his executing P. R. Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant should not contact the minor female child or her family members in any manner
- (iv) The applicant/accused should not directly or indirectly, make any inducement, threat or promise to any person

acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to the Police Officer.

(A.M.BADAR J.)