

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2518 OF 2017

Akshay Shripad Gole ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

Mr.Harshad Bhadbhade i/b. Anwar Landge, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

Mr.S.R.Adsule, PSI, Vartak Nagar Police Station, Thane is present in person.

CORAM : A.M.BADAR J.

DATED : 6th DECEMBER 2017.

P.C. :

1 The applicant is an accused in Crime No.353 of 2016
registered with Vartaknagar Police Station for offences punishable
under Section 376 of the Indian Penal Code as well as under
Section 4 and 6 of the Protection of Children from Sexual Offences
Act, 2012. The FIR is lodged by the prosecutrix on 28/08/2016.

2 Heard the learned Advocate appearing for the
applicant/accused. He pointed out the FIR of the subject crime
and argued that accusing finger is categorically pointed to the

applicant by the prosecutrix for commission of the alleged crime. The learned Advocate further argued that immediately, on the very next day i.e. 29/08/2016, the same prosecutrix lodged another FIR to the Vartaknagar Police Station pointing accusing finger to another person named Pravin Pote in respect of commission of alleged crime. The learned Advocate then drew my attention to the Order releasing the other person on bail in a report lodged by the prosecutrix on the next day and submitted that the Order releasing him on bail shows that his DNA profile did not match to the offspring delivered by the prosecutrix. The learned Advocate further argued that the second person against whom the FIR is lodged on the very next day is released on bail by the learned Additional Sessions Judge, Thane and, therefore, on the principle of parity, present applicant is also required to be given the same treatment. The learned Advocate drew my attention to the report of DNA Test to point out that the DNA profile of the present applicant also did not match to the child born to the prosecutrix.

3 The learned Additional Public Prosecutor opposed the application by pointing out the date of birth of the prosecutrix as well as the averments in the FIR to the effect that she has lost her parents long back and she was on the mercy of her aunt. The learned Additional Public Prosecutor argued that social aspect of the crime are required to be considered.

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

5 The first FIR lodged by the prosecutrix is against the present applicant. In the said FIR, the prosecutrix has deposed that it was the present applicant, who had committed penetrative sexual assault on her. She has not named anybody else as perpetrator of the crime in question, but has stated that because of acquaintance with the applicant, the applicant took advantage and committed penetrative sexual assault on her. This subject FIR indicates that there was love affair between the prosecutrix as well as the present applicant.

6 Immediately, on 29/08/2016, the prosecutrix then lodged another report leading to the registration of Crime No.356 of 2016 against another person named Pravin Pote. This second FIR lodged by the prosecutrix shows that the prosecutrix averred that she had acquaintance with Pravin Pote and said Pravin had committed penetrative sexual assault on her. This FIR lodged on the next day against Pravin also indicates that the prosecutrix was having love affairs only with Pravin Pote. In this second FIR, lodged against Pravin Pote, the prosecutrix had put the entire blame on Pravin Pote and had not indicated that somebody else had also committed penetrative sexual assault on her. On this backdrop, it is seen that the FIR came to be lodged only after it

was detected that the prosecutrix had conceived. The prosecutrix had given birth to a female child. The DNA Report placed with the charge-sheet against the present applicant do show that the present applicant is not a biological father of the female child delivered by the prosecutrix. Order releasing Pravin Pote – accused in the crime registered at the instance of the prosecutrix on the next day also reveals that said Pravin Pote is also not a biological father of the female child born to the prosecutrix.

7 The nature of evidence against the present applicant thus makes it clear that the child born to the prosecutrix is not fathered by him though the prosecutrix at the first point of time put the entire blame on the present applicant. On the very next day, the another FIR is lodged against some other person named Pravin Pote, but he is also not a biological father of the child born. Pravin Pote, against whom similar allegations are made by the prosecutrix, is already released on bail. Upon being asked, the learned Additional Public Prosecutor accepted the fact that the State has not challenged the Order releasing the another person named Pravin Pote against whom similar allegations are levelled by the prosecutrix.

8 In this view of the matter, on conclusion of investigation and on filing of the charge-sheet, I do not find it proper to continue pre-trial detention of the applicant.

9 The learned Additional Public Prosecutor pointed out that on the last date, the witnesses were present for deposing in the Special Case registered against the present applicant. The learned Additional Public Prosecutor pointed out that the accused was not produced on that day before the Court. The State should thank itself for not producing the accused for recording evidence before the concerned Court. This indicates that the trial is protracted not at the instance of the present applicant, but at the instance of the State. There is no tangible material to indicate that if released on bail, the applicant would either tamper with the prosecution evidence or that he will not be available for trial. In this view of the matter, the following order :

- (i) The application is allowed.
- (ii) The applicant/accused in Crime No.353 of 2016 registered with Vartaknagar Police Station for offences punishable under Section 376 of the Indian Penal Code as well as under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 be released on bail on his executing P.R.Bond of Rs.30,000/- and on furnishing one or two solvent surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should not contact the prosecutrix or her relatives 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.
- (v) The applicant/accused should attend all dates of hearing before the learned trial Court and to cooperate the trial Court in expeditious disposal of the trial against him.
- (vi) Failure to abide by the conditions imposed upon him, this Order will entitle the prosecuting agency to apply for cancellation of bail granted to the applicant.

(A.M.BADAR J.)