

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2436 OF 2016

Abdul Rehman @ Rauj Kasma Shaikh
V/s.

.....Applicant

The State of Maharashtra

....Respondent

Mr. Ujjwal Gandhi i/b Ms. Rishi Bhuta Advocate for Applicant.
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 8th MARCH, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 15/02/2016 in crime no. 108 of 2016 registered at D. N. Nagar Police Station. Investigation is completed and charge-sheet is filed against the applicant for offence punishable under sections 376 (2) (i), 323, 354 (a), (b) 506 (ii) of the Indian Penal Code and section 4, 8, 12 of Protection of Children from Sexual Offences Act, 2012.

2) It is the case of the prosecution that on 15/02/2016, Mrs Veerlaxmi Rajesh lodged a report at the police station that she is a mother of 6 year old girl Ms. 'X'. That her daughter goes to school in a private van. That on

ism

11/02/2016, when she was changing the clothes of her daughter, she found that there were objectionable stains on her undergarments. She inquired with child. The child seemed to be scared and did not reply. The mother had taken her into confidence and had inquired with her and at that time, daughter of the informant had disclosed that she had been sexually abused during the long recess of the school by one uncle. The girl seemed to be in a disturbed state of mind and kept on murmuring in her sleep. On 12/02/2016 also, the same incident had occurred at the hands of the same person. The parents had noted the number of the van. At the time when the first informant was recording the number of the van, the driver had fled from the spot. Thereafter, they had approached the school authorities and informed about the same.

3) The school authorities had informed the parents that they have no information about any objectionable conduct of any person on 11th and 12th February 2016.

4) The statement of the victim was recorded and she has narrated the trauma which she had undergone at the hands of the present applicant. The

parents of the victim had confronted the applicant and at that time, he had simply fled from the spot.

5) The learned counsel for the applicant vehemently submitted that the material on record would not inspire the confidence of the Court as no such incident has occurred. The learned counsel for the applicant has further submitted that the survivor had disclosed in her statement that she had informed about the said incident to one Radhika teacher. That the statement of Radhika teacher is not recorded by the investigating agency. The school authorities had called Radhika teacher, she had denied of any such disclosure by the victim girl. It is also submitted that the place shown by the victim girl is an open place which can be captured by the CCTV footage and there is no such incident which has been captured in the CCTV footage and therefore, according to the learned counsel for the applicant, this is a case of false implication.

6) The learned APP has drawn the attention of this Court to an E-mail sent by father of the victim to the school authorities on 13/02/2016 at 12.17 p.m.

informing them that his daughter had disclosed to them about sexual abuse. The daughter had also informed to her parents that she had cried for help and at that stage, she was threatened by the accused. Father had also informed the school authorities that at the relevant time, teacher had tried to search but the stranger had fled from the spot. It is further pertinent to note that father had given the details of the identification of the accused.

7) Learned counsel for the applicant has submitted that the school had not taken any action and has denied that any of the teacher was informed about the same and that the school authorities had no knowledge about the said incident, however, E-mail sent by father of the victim is a clear indication that the school has failed to take any action and in order to save their reputation has denied the knowledge about the said incident. There is no reason for the first informant to falsely implicate the applicant at the cost of dignity, honour and reputation of her daughter.

8) Section 29 and 30 of the Protection of Children from Sexual Offences Act, 2012 contemplates as follows:

*“29. **Presumption as to certain offences** – Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special*

Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state – (1) *In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

(2) *For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability”.*

9) In view of this, in the peculiar facts of the case, this Court is not inclined to grant bail.

10) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)