

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.1008 OF 2016

Shreekant S/o Subhash Achale

..VS..

State of Maharashtra, through Police Station Officer, Salekasa, District Gondia

.....
 Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's Order

Shri R.M. Daga, counsel with Shri R.M. Pande & Shri Sanket
 Bhandarkar, Advs. for the applicant.
 Shri N.B. Jawade, Addl.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.
DATED : FEBRUARY 13, 2017.

This is an application by accused involved in
 Crime No.39 of 2016 registered with Salekasa Police
 Station, District Gondia for the offences punishable
 under Sections 363, 366, and 376(2)(n) of the Indian
 Penal Code read with Sections 4 and 6 of the Protection
 of Children from Sexual Offences Act, 2012.

Heard learned counsel for the applicant and
 learned Additional Public Prosecutor for the non-
 applicant/State.

It is submitted on behalf of applicant that
 prosecutrix though is minor aged 15 years, at the date
 of incident, she had willingly accompanied applicant
 and at no point of time it is applicant who had forcibly
 took her out of possession of her parents. It is,
 therefore, contended that no charge, *prima facie*, can be

said to be established against applicant under Sections 363 and 366 of the Indian Penal Code.

With regard to offence under Section 376 (2)(n), learned counsel for applicant by referring to the contents of report, statements of Preeti, friend of complainant, and Ravi, in whose house prosecutrix has spent one night with applicant as well as of her parents had submitted that from their statements it is not revealed that prosecutrix had made disclosure about alleged sexual intercourse upon her by applicant. By referring to history given to the medical officer, it is pointed out that even while giving such history, prosecutrix is silent about incident alleged to have taken place at Dongargad. It is, therefore, contended that though prosecutrix is minor, from her conduct it cannot be said that applicant had without her consent indulged into physical relation. Applicant in support of the application has also relied upon the decision of this Court in the case of Pravin Ashok Rakh .vs.. State of Maharashtra, reported at [2007(1) B Cr C 228) wherein prosecutrix though was minor, application for bail was allowed.

Learned Additional Public Prosecutor has opposed the application as per its reply and has contended that admittedly incident has taken place after the amended provision of Section 375 had come into force according to which the age of prosecutrix upto 18 years is minor. It is further contended that in that view

of the matter, there is no reason to consider the conduct of the prosecutrix and has submitted that there is nothing to disbelieve her statement and has, therefore, submitted that application be rejected as even otherwise applicant since is resident of same village, there is possibility of his tampering with prosecutrix.

In the background of submissions advanced as aforesaid, from the report it is noted that on 8.7.2016 prosecutrix along with her relative Preeti, friends Vishal and applicant on her own left her house and accompanied them on the motorcycle to proceed to Dongargad. Applicant and prosecutrix were travelling on two-wheeler while Preeti, Vishal and Jitesh were travelling on another two-wheeler. It is contended that at Dongargad, applicant and prosecutrix occupied one room in a lodge where it is alleged that applicant had committed sexual intercourse with prosecutrix against her wish.

From the report it is further revealed that prosecutrix thereafter on the say of applicant accompanied him to Bhilai while her relative Preeti, friends Vishal and Jitesh went back to their village Purada. From the report it is further revealed that at Bhilai, applicant took prosecutrix to his friend Ravi where they stayed over night when again prosecutrix claimed to have indulged into physical contact with applicant and on the following day, she travelled alone for Deori where she reached at 5:30 in the noon.

Thus, on considering the contents of report as aforesaid, so far as Sections 363 and 366 of the Indian Penal Code are concerned, it *prima facie* appears that prosecutrix on her own left her house who accompanied her friends, relative Preeti along with applicant to Bhilai. It further appears from the report that at Dongargad she was taken by applicant in one room in a lodge where she is alleged to have sexually assaulted against her will, however from her report it does not reveal that she had made complaint against applicant to any of those who were accompanying her about this act. In fact, it is further found that in spite of her having been sexually assaulted against her wish, prosecutrix accompanied applicant though claims to be against her wish to Bhilai on motorcycle. Admittedly, it is no case of prosecution that she till reached to Bhilai had in any manner made attempt to rescue herself or raised any shouts. It is further material to note that at Bhilai applicant took her to his friend's house namely Ravi and is alleged to have again sexually assaulted her in his house in the night. Though from the report it is revealed that prosecutrix met Ravi on the following day at 8:00 a.m. when she was sent by applicant alone to her home by bus, she did not disclose anything to Ravi. In fact, statements of Preeti and Ravi support said fact as from their statements it does not reveal that prosecutrix had informed them about her having been indulged in physical relation with applicant either in

room at Dongargad or in the house of Ravi. Neither of these witnesses namely Preeti, Vishal, and Jitesh stated about prosecutrix informing them of being sexually assaulted in the lodge nor from the statement of Ravi it reveals that prosecutrix had informed him of sexually assaulted in his house by applicant.

Moreover, from the M.L.C. documents though prosecutrix had given history of forceful sex with applicant while at Bhilai, same is silent about any such act at Dongargad. From the medical report it is noted that there are no injuries found on the person of prosecutrix whose hymen is stated to be ruptured and overall findings were consistent with sexual assault. However, no final opinion is given for want of report which is admittedly awaited till the date of filing of charge-sheet in the present crime.

Statements of parents of prosecutrix when perused reveal that since prosecutrix was not in the house on 8.7.2016 since morning at 8:00 a.m., they had searched for her in her school and in the night at around 8:00 p.m. went to the house of Preeti who was found present in the house and informed that she along with prosecutrix after school had went to the Public Health Centre at village Mulla as prosecutrix was not keeping well and from there prosecutrix informed her that she would go to her friend's house and directed Preeti to go home and accordingly Preeti went to her house. Here, it is also material to note that Preeti did

not disclose real fact to parents of prosecutrix. Though she might not be aware of prosecutrix having been sexually assaulted by applicant as stated aforesaid since prosecutrix had not disclosed said fact to her nor to any of her friends who had accompanied her, but nothing prevented Preeti from not disclosing fact of prosecutrix accompanying her as well as applicant and their two friends to Dongargad. In that view of the matter, statements of her parents only disclosed about above fact.

From the statement of Ravi, friend of applicant as aforesaid, it is revealed that after prosecutrix met him in the morning, though she had not made any disclosure about having been sexually assaulted by applicant as alleged by her, it is also noted that as per his statement, thereafter, he along with prosecutrix and applicant went to hotel where they had snacks and, thereafter, prosecutrix was left in a bus at Durg bus stop.

Having considered facts as aforesaid, though prosecutrix is minor, her conduct about not disclosing of alleged incident of rape upon her to anyone, till she reaches back to her home on 9.7.2016, in fact creates doubt about she being subjected to intercourse at Dongargad and, thereafter, at Bhilai in house of Ravi. In that view of the matter, since investigation is complete and charge-sheet is already filed, the application is liable to be allowed by imposing

conditions upon applicant as per order below :

Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

While on bail, applicant shall mark presence with Salekasa Police Station, District Gondia once in three months on the first day of each such month, pending trial.

Applicant shall not enter into territorial limits of village Purada, District Gondia, pending trial.

Needless to say that applicant shall not make any attempt to contact prosecutrix Babita nor shall pressurize her in any manner whatsoever. In the event it is found that applicant has misused liberty, granted to him, this order shall be liable for cancellation.

Needless to say that observations as aforesaid are *prima facie* and learned Trial Judge shall not get influenced with the same and shall independently evaluate the evidence.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

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(Personal Assistant)

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