

Sarnobat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 342 OF 2018

Sagar Shivaji Shinde	.. Applicant.
Vs.	
The State of Maharashtra.	.. Respondent.

Mr. Priyal G. Sarda, Advocate for the Applicant.
Mr. S. H. Yadav, APP for the Respondent/State.
Mr. S. V. Umare, API, Hadapsar Police Station, Pune City present.

CORAM : P. N. DESHMUKH, J.

DATE : 27TH FEBRUARY, 2018.

P. C. :

1. This is an application for grant of bail in Crime No. 460/2017 registered at Hadapsar Police Station under Section 363, 366, 376, 376(2)(n)(i) of Indian Penal Code and under Section 4, 8 of the Protection of Children From Sexual Offences Act.

2. Learned counsel for applicant had submitted that there is no sufficient evidence establishing involvement of applicant in the present crime though, the age of prosecutrix is 15 years. It is further contended that from the documents filed with the charge-sheet, case of prosecution is full of doubts as from the statement of prosecutrix and history given by her to the Medical Officer, both on same day are total

contradictory to each other. By referring statements on record, it is further contended that no involvement of applicant to have kidnapped and to have committed sexual assault on prosecutrix can be said to be established. It is also contended that no report is lodged immediately after the incident on 1st May, 2017 which also creates reasonable doubt in the case of prosecution of false implication of applicant. Lastly, it is submitted that since applicant is labour and since investigation is complete and charge-sheet is filed, application be allowed by imposing suitable conditions upon the applicant.

3. Learned Additional Public Prosecutor by referring documents filed in the charge-sheet has contended that there is nothing to disbelieve the statement of prosecutrix wherein she has specifically named the applicant who have kidnapped and to have sexually molested her. It is further contended that her statement is found substantiated from the medical report. The prosecution has therefore, contended that application is liable to be rejected as there is direct evidence against the applicant.

4. In the background of submissions advanced as aforesaid, on perusal of report lodged by mother of prosecutrix, it is noted that missing report came to be lodged on 9th May, 2017 though according to its contents, whereabouts of prosecutrix were not known since 1st May, 2017, after she left her house at around 12.00 noon to visit some

nearby shop to purchase the wafers.

According to the additional statement of complainant Suman, dated 13th May, 2017 involvement of applicant is found wherein, she has stated that on 12th May, 2017, suddenly prosecutrix arrived to her house in the morning and as she was found scared she was taken to Hadapsar Police Station where she in her statement implicated applicant who had kidnapped her on extending threats from Hadapsar and further stated to have sexually assaulted her at Alandi where she was taken forcibly. She further stated that from Alandi she was taken to Chakan and from there to Sangamner. As the prosecutrix raised shouts while travelling by Bus, she was taken to Nasik where she stayed with applicant at his cousin sister's place and subjected to sexual intercourse.

5. Thus, from the FIR and the additional statement of complainant, it is alleged that applicant committed sexual intercourse with the prosecutrix while she was staying at Nasik.

6. Documents filed with the application reveals that after lodging of report on 31st May, 2017 prosecutrix referred for medical examination on the same day by police. On her examination though, she is found to be subjected to sexual intercourse and was also found to have injuries on her private part and on her body history stated by prosecutrix to the medical officer, is totally contradictory to the contents

of report and additional statement of her mother wherein prosecutrix stated that on 1st May, 2017 she had left with one boy from her house to go to some shop. The boy is referred as Omkar aged 20 years who is further stated to have forcibly taken prosecutrix to his house where he had sexually assault upon her. She has further stated that she ran away from his house and went to Hadapsar and then to Alandi where she met one unknown woman, wityh whom she accompanied to Nasik and stays for 10 days. She has further stated that on 12th May, 2017 she on her own came back to her house.

7. In view of such contradictory statements as aforesaid, there appears substance of applicant of his false implication.

8. In view of above facts though from the school leaving certificate of prosecutrix, she appears to be minor. Since involvement of applicant itself is doubtful, this by itself is not sufficient to reject the application, more so when from the statements of independent witnesses like Renuka Chavan, Mangala Patil and Gajarabai Manjule it reveals that it is prosecutrix herself on inquiry stated them to have willfully accompanied applicant and then she was major and as such they had married.

9. In view of facts of aforesaid and considering the age of applicant who is stated to be 15 years old, application is liable to be allowed by imposing conditions. Hence, the order;

ORDER

i) The applicant shall be released on bail on his executing PR bond in a sum of Rs.35,000/- with one surety in the like amount.

ii) While on bail, applicant shall mark his presence with the Pandharpur City Police Station on 15th day of each month.

lii) The applicant shall not tamper with the prosecutrix and others evidence.

iv) The applicant shall not enter the limits of Hadapsar Police Station pending the trial.

[P. N. DESHMUKH , J.]