

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

CRIMINAL BAIL APPLICATION NO.565 OF 2018

Amol Prakash Madnaik	..Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Tejas Hilage for Applicant .
Mr. Y. M. Nakhwa, APP for the Respondent.

CORAM : P. N. DESHMUKH, J.
DATE : 6th APRIL, 2018

P.C.:

. Heard. This application is for bail filed by one of the accused involved in C.R. No.271/2016 registered with Jaysingpur Police Station for the offences punishable under section 376(2)(i), 376(d), 506 of IPC and section 6 of the POCSO Act.

2. It is specific case of applicant that he along with co-accused are falsely implicated by prosecutrix who was knowing them as neighbours and also on the count that belated report is lodged in the month of December 2016 though according to complainant her daughter, prosecutrix was sexually assaulted by applicant and co-accused repeatedly during the period June-July 2016. It is further contended that according to the DNA test report though prosecutrix is certified to be biological mother of the infant neither applicant nor co-accused are certified to be biological father of new born baby and has therefore contended that though medical report establish sexual intercourse, applicant cannot be connected with the said act. It is therefore submitted that since investigation is complete and charge-sheet is filed application be allowed since applicant is otherwise student and shall abide by any of the conditions imposed upon him.

3. Learned APP opposed the application and submitted that according to contents of report applicant's involvement is clearly established which is further corroborated with the history given to the Medical Officer at the time of her medical examination. Learned APP however could not satisfy the Court with regard to the DNA test report on record which in clear terms absolve the applicant. Learned APP opposed the application and submitted that application be rejected.

4. Perusal of report would reveal that on 28/12/2016 mother of prosecutrix lodged the same stating that prosecutrix aged about 15 years has complained of abdominal pain on 26/12/2016 was taken to the hospital where sonography was performed and on that day after taking her into confidence complainant inquired about the abdominal pain, when prosecutrix stated that she has missed her menstrual cycle and 7-8 months prior thereof when she was alone in the house she was sexually assaulted by applicant against her wish. It is further stated that thereafter in July 2016 applicant again visited house of prosecutrix when she was alone and had sexual intercourse against her wish, threatening that she should not disclose to anyone and repeated said act on 2 occasions thereafter with the gap of 15 days in the house of prosecutrix. According to report prosecutrix did not disclose said fact as she was threatened by applicant. Considering the said portion of report it is material to note that alleged sexual assault by applicant is stated to have taken place about 7-8 months prior to the date of lodging of report which is dated 28/12/2016. The incident involving applicant is alleged to have take place some time in the month of July i.e. prior to 5 months of lodging of report.

5. In the report it is further stated that thereafter applicant called prosecutrix in his house and on the pretext of marrying her sexually exploited her. On that day his friend co-accused who arrived in his house

also committed same act with her and further claims that 15 days thereafter applicant again called her to his house where again both of them committed similar act and further claims that both the accused thereafter kept calling prosecutrix to the house of applicant and repeatedly exploited her sexually saying that applicant will marry her. The contents of report on the face of record are not found convincing for the reason that if applicant wanted to marry this girl as told to her or even in the event prosecutrix was submitting to the lust of applicant on the pretext of marriage, story put forth in the report of applicant's friend Abhijit committing similar act along with applicant in his house not on one occasion but as many as on various occasions does not appear to be convincing.

6. In view of doubtful contents as aforesaid there appears much substance in the submissions advanced on behalf of applicant that he is falsely implicated. Applicant's innocence is further found substantiated from DNA report, according to which applicant is absolved to be biological father of the infant nor co-accused Abhijeet is certified to be biological father of such infant. Though prosecutrix is certified to have sustained no injuries on her person, opinion is kept pending till receipt of FSL report. Though according to learned APP charge-sheet is filed, same is not forming part of case diary. Hence order:

ORDER

- i) Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount;
- ii) Applicant shall mark his presence with Jaisingpur Police Station, Pune once in 15 days initially for a period of 3 months and thereafter once in three months on first day of each such month pending trial;

iii) Applicant shall not enter Udgaon village, Taluka Shirol, District Kolhapur nor shall make any attempt to tamper with the prosecutrix or any other evidence.

iv) Application is disposed of accordingly.

(P.N. DESHMUKH, J)