

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.725 OF 2018

Manoj @ Manu Ashok Shirsat,
Age 23 years, Occ.Service,
R/o.Room No.2, Ganesh Chawl, Vadeghar,
Kalyan, District Thane
(At present in Adharwadi Jail, Kalyan) Applicant
versus
The State of Maharashtra Respondent

Mr.Kabul Singh Labana for applicant.
Mr.Arfa Sait, APP, for State.
Mr.N.R.Jadhav, API, Mahatma Phule Chowk Police Station, Kalyan.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th September 2018

PC :

1. The applicant is seeking bail in connection with CR No.I-28 of 2017 registered with Mahatma Phule Chowk Police Station, Kalyan for offences under Sections 376, 366 of Indian Penal Code read with Section 4 of Protection of Children from Sexual Offences Act, ('POCSO Act').

2. The FIR was lodged by mother of the victim. The victim is aged about 17 years. It is alleged that on 28th January 2017, there was a quarrel between the victim and her mother. Hence, the victim left the house on 27th January 2017 and did not return home. The complainant tried to find out her whereabouts. On 28th January 2017 the complainant received a call of the victim. The victim then visited the house and informed about what had happened with her on

the previous day. She informed the complainant that on account of quarrel, she left house and went to Kalyan Station. She contacted Manoj @ Nannu who was known to her since few days ago. She informed him about the quarrel with her mother. The accused told her that they can stay at the lodge. She refused to do so. However, the accused took her on motorcycle and took her to Titwala. He stopped at a lodge situated near the temple and informed her that they can stay at the lodge for the night. He forcibly took her to the lodge. They did not make any entry in the lodge. He then had forceful intercourse with her. He dropped her at the Kalyan Railway Station at night. The victim then contacted her friend Pranali. Thereafter the FIR was lodged on 30th January 2017 at about 12.30 hours. The statement of victim was recorded on 30th January 2017 for which she stated that on account of quarrel she had left house. She met the accused who took her to the lodge. They stayed in the lodge. One boy had brought thumps up at lodge. She consumed the same. She felt uneasy after consumption of thumps up. After fifteen to twenty minutes she realized pains in her private part. She noticed that her under garments were removed and the accused had forceful sexual intercourse with her.

3. The applicant was arrested on 31st January 2017. The investigation is complete and charge sheet is filed.

4. The contention of the applicant is that there was no sexual intercourse with the victim. The story narrated by the victim is false. Taking the case as it is, the victim had accompanied the accused voluntarily and they had stayed together wherein there was alleged physical relationship. It is submitted that the medical evidence does

not support the allegation of forceful sexual intercourse. Therefore, detention of the applicant is not necessary.

5. Per contra, learned APP submitted that it is a case of rape and it cannot be said that relationship was consensual. The victim was in vulnerable condition and the accused took disadvantage of the situation. She was forcefully taken to lodge. She was helpless as she had left the house due to quarrel with mother. She also contacted her friend Pranita. The statement of Pranita also corroborates the fact that the victim was in frightened condition. The medical evidence supports the case of prosecution. The victim was 17 years of old at the time of incident. The act committed by the accused was without the consent of the victim and considering the fact that she was minor, assuming that there was consent, it was immaterial.

6. I have perused the statement of first informant who is mother of victim. The victim was 17 years of age at the time of alleged incident. I have also perused the statement of victim. According to her, she left the house due to quarrel with mother. She contacted the accused who came on motorcycle and advised her to stay at lodge. Although she was reluctant to stay at lodge, the accused had allegedly taken her to lodge at Titwala. She has also stated that she consumed the soft drink due to which she felt dizziness and at that time the accused had committed forceful sexual intercourse with her. There was no entry in the register of lodge. The medical evidence indicate that an attempt of sexual assault cannot be ruled out. The evidence, however, does not mention that there was intercourse. Thus, medical evidence is contrary to the version of victim. The genuineness of her allegation that she consumed the soft drink which

resulted in dizziness, is debatable. The applicant is in custody from the date of arrest. Investigation is complete and charge sheet is filed. There are no reported criminal antecedents against applicant. Hence, case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.725 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-28 of 2017 registered with Mahatama Phule Chowk Police Station, Kalyan on furnishing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Mahatama Phule Chowk Police Station once in a month on every first Friday between 10 am and 12 noon till further orders;
- (iv) The applicant shall not tamper with evidence;
- (v) The applicant shall stay away from the victim and her family members;
- (vi) The applicant is permitted to furnish cash security in the sum of Rs.20,000/- for a period of four weeks.

(PRAKASH D. NAIK, J.)

MST