

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.513 OF 2018

IN

CRIMINAL APPEAL NO.1071 OF 2017

Salim Noorhasan Shaikh

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Sherali S. Khan, Advocate for the Applicant.

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 28th NOVEMBER 2018.

P.C. :

1. Applicant/accused Salim Shaikh by this application is seeking his release on bail. He is convicted of the offence punishable under Section 376(2)(1) of the Indian Penal Code, apart from Sections 363 and 366 read with Section 34 of the Indian Penal Code. Different sentences are imposed on different counts and all substantive sentences are directed to run concurrently. The highest sentence is that of rigorous

imprisonment for 10 years, which is imposed on the first count.

2. Heard the learned counsel appearing for the applicant/accused. He drew my attention to the judgment of the trial Court and argued that there is absolutely no iota of evidence to infer that the victim was suffering from mental illness. The report filed with the application Exh.41 was not proved by the prosecution and this fact is referred to in Para 9 of the judgment. My attention is also drawn to the evidence of the alleged victim of the crime in question to demonstrate that her evidence is not trustworthy and reliable. It is argued that aunt of the victim was not even present on the spot of the incident. There is no evidence to suggest that the applicant/accused had kidnapped the victim.

3. The learned APP opposed the application by contending that even forensic evidence supports the prosecution, and therefore, the applicant is not entitled for bail.

4. According to the prosecution case, the victim of the crime in question is a mentally retarded woman, aged about 20 years. She had been to the Dargah for offering the Namaz and she was abducted from the Ray Road Station by the applicant and the co-

accused. By taking her to the Cotton Green Railway Station, they successively committed rape on her.

5. In order to demonstrate that the victim of the offence, who is examined as PW-7 is suffering from mental ailment, the prosecution has relied upon the evidence of PW-11 Swapnil Bhopi, Clinical Psychologist working with the J.J.Hospital. This witness has proved his opinion Exh.49 given by Dr. Richi Patil mentioning that the victim was having IQ level of less than 55. Prima facie, at this stage, this evidence cannot be ignored in the light of provisions of Section 32(2) of the Indian Evidence Act, 1872.

6. Evidence of PW-10 Anita Menkar, Police Sub-Inspector shows that during the course of night patrolling duty, she had witnessed the victim girl in company of the applicant/accused and two other co-accused and as the victim was found in frightened condition, she brought the girl alongwith three boys at police station. Immediately thereafter the victim was sent for medical examination at the J.J. Hospital, where she has examined by PW-14 Dr.Nikhil Jagtap. He found that there were injuries on hymen of the victim girl and this medical officer also witnessed hymenal

tears at 3, 6, 9 and 12 O'clock position. The victim while in the witness box had identified those three boys and in the light of the observations of the Hon'ble Apex Court in the matter of *State of Punjab v. Gurmeet Singh*¹ it cannot be said that no case is made out against the applicant/accused.

7. Duration of the sentence undergone is not material in the case like this. In the result, no case for bail is made out.

8. The application is, therefore, rejected.

9. Hearing of the appeal is expedited. It be placed in the board of final hearing.

(A.M.BADAR J.)

¹ 1996 Cr.L.J. 1996 172.