

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.560 OF 2018

IN

CRIMINAL APPEAL NO.401 OF 2018

WITH

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Sandeep Sahadev Varli ... **Applicant**

V/s.

Union Territory of Daman & Diu ... **Respondent**

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Mr.Ashish S. Chavan, Advocate for the Applicant.

Ms.Purnima H. Kantharia, Advocate for the Respondent No.1.

Ms.Anamika Malhotra, APP for the Applicant.

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CORAM : A.M.BADAR J.

DATED : 21st JUNE 2018.

P.C. :

1 These are applications for suspension of sentence and releasing the applicant/accused on bail during pendency of appeal filed by them.

2 The applicant/accused has been convicted of offences punishable under Sections 376(2)(i) and 506(II) of the Indian Penal Code as well as under Section 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO' for the sake of brevity). For the offence punishable under Section 376(2)(i) of the Indian Penal Code read with Section 6 of the POCSO, he has been sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.4000/- and in default to undergo further rigorous imprisonment for six months. For the offence punishable under Section 506(II) of the Indian Penal Code, he has been sentenced to suffer rigorous imprisonment for two years apart from imposition of fine of Rs.1000/- and in default to further undergo rigorous imprisonment for two months.

3 Heard the learned Counsel appearing for the applicant/accused at sufficient length of time. He took me through the evidence of Medical Officers P.W.No.1 Dr.Lina Patel and P.W.No.3 Shailesh Arlekar, who collected samples of blood of the applicant, victim as well as child born to the victim. My attention was also drawn to the evidence of P.W.No.11 Mitesh Trivedi, Scientific Officer working with FSL, Surat. With this evidence, the learned Counsel appearing for the applicant/accused argued that evidence of these prosecution witnesses is inconsistent and casts shadow of doubt on the prosecution case as there is

inconsistency in respect of the seals applied to the bulbs in which the samples were collected and evidence of the prosecution is not disclosing the fact that samples with the bulbs were sent for medical analysis in an envelope to which the seal was applied. The learned Counsel then took me through the evidence of Investigating Officer and comparing it with the documentary evidence in the form of Muddemal Register and Muddemal Receipts, it is argued that date of collection of samples and date of deposit of samples are not matching. Samples are seen to be collected after depositing thereof with the Muddemal Mohezir with Muddemal Receipt. Carrier is not examined and panch witness before whom the samples were allegedly collected have not supported the prosecution case. The learned Counsel further argued that evidence of the victim has surfaced on record by way of improvements and omissions, which are duly proved through the evidence of Investigating Officer. There is delay in disclosing the incident by the victim to her parents. Though the victim was doing routine household work from 10/05/2015 to 06/07/2016 she has not disclosed the incident to her near and dear once. The learned Counsel further argued that it was consistent stand of the accused that biological father of the child born to the victim was somebody else and statement under Section 313 of the Criminal Procedure Code reflected this stand which has also incorporated in written statement filed separately. With this, it is argued that the evidence of the prosecution is totally discrepant and insufficient to

infer guilt of the applicant/accused in the crime in question and, therefore, the applicant deserves to be released on bail.

4 The learned Additional Public Prosecutor opposed the application by contending that the samples were drawn by following due process and evidence of the prosecution is reliable and trustworthy.

5 I have carefully considered the rival submissions and also perused the material placed on record. The law regarding appreciation of evidence of the victim of the sexual offence is set at rest by catena of Judgments rendered by the Honourable Apex Court. In the matter of *State of Punjab v. Gurmit Singh*¹ In the said while dealing with this aspect the Honourable Apex Court has observed thus :

“The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable

1 (1996) 2 SCC 384.

prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on

the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

It is thus clear that the victim of such sexual offence is not accomplice and her evidence stands on the higher pedestal than the evidence of injured witness, she having suffered physical as well as mental trauma of the incident in question.

6 In the case in hand, evidence of prosecution indicates that the victim of the crime in question viz. P.W.No.2 was below 18 years of age and as such a 'child' as defined by Section 2(d) of the POCSO.

7 The First Informant is the father of the victim. He has lodged the report and set the criminal law in motion. Defence of

the accused as reflected from the statement under Section 313 of the Criminal Procedure Code is to the effect that some rich boy is biological father of the child born to the prosecutrix. It is hard to digest that if defence case is of false implication then why the father of the victim child would save a rich boy who is father of the child born to the minor female victim and would implicate the present applicant in the crime in question. Evidence of the minor female victim is to the effect that on 10/05/2015, the applicant took her in the dilapidated house in one wadi and then had a forcible sexual intercourse with her. She further deposed that after two-three weeks, he again called her and again did sex with her in another wadi. Minor female victim further deposed that the accused did sex with her many times. Her evidence that the accused committed sexual intercourse with her in the house at wadi as well as her further evidence that the accused did sex with her many times is consistent with her version and has not come on record by way of improvements. Thus, even if improvements to the effect that the sex was forcible and after two-three weeks again there was one episode of sexual intercourse, is ignored from consideration, then also her evidence reflects that accused has committed sexual intercourse with her on many occasion.

8 Forensic evidence is corroborative in nature. Even if such evidence does not support the prosecution case, conviction can safely be recorded in sexual offences if version of the victim of

such crime is found trustworthy. Therefore, merely because, according to the learned Counsel appearing for the applicant, the forensic evidence is discrepant that by itself can not casts a shadow of doubt on the prosecution case. In the Indian setting it is difficult to conclude that in such offence of aggravated penetrative sexual assault on minor female child perpetrator of the crime who is allegedly a rich boy would be shielded by the parents of the victim and somebody else would be substituted in his place. Be that as it may, considering the nature of offence and the evidence adduced by the victim of the crime, I do not feel that the case in hand is a fit case to release the applicant/accused on bail during the pendency of appeal.

9 The applications are, therefore, rejected.

10 Hearing of the appeal is expedited in the category.

(A.M.BADAR J.)