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

BAIL APPLICATION NO.1135 OF 2018

NAVNATH BHAUSAHEB BHAGAT

..APPLICANT

Vs

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Sandeep Mishra for applicant.
Ms. A.A. Takalkar, APP for State.

CORAM : A.S.GADKARI, J.
DATE : 9th August 2018.

P.C.:

1] This is an application under Section 439 of the Cr. P.C for bail in CR No. 476 of 2017 dated 9.12.2017 registered with MHB Colony Police Station, Mumbai under sections 376 and 354 of the Indian Penal Code and under sections 4,6,8,12 of the Protection of Children From Sexual Offences Act (POCSO Act).

2] Heard the learned Counsel for the applicant and the learned APP for the State. Perused the chargesheet.

3] The prosecutrix was aged about 14 years on the date of alleged offence and with a view to protect her identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and under Section

33(7) of the Protection of Children From Sexual Offences Act (POCSO Act), the detailed narration of facts mentioned in the first information report, statement of victim girl and other statements disclosing her identity are hereby avoided.

3] The first information report is lodged by the wife of the applicant and the mother of victim/prosecutrix. The prosecutrix is the younger daughter of the applicant. The prosecution case in brief is that, in the midnight of 9.12.2017 the applicant committed penetrative sexual assault on the prosecutrix at their residential premises. That the elder daughter of the applicant who was also minor saw the said alleged act and woke up her mother. The applicant pleaded guilty with the first informant/his wife. In the morning of 9.12.2017 the present crime has been registered.

4] The learned counsel for the applicant submitted that, the medical report produced by the prosecution does not support the case of forcible sexual assault as it does not speak about injuries on the victim girl. He submitted that, the applicant is in jail since his arrest i.e. 10.12.2017 and the police have submitted chargesheet and therefore the applicant may be released on bail.

5] The elder daughter of the applicant who was also minor on the date of incident and is witness to the said crime, in her statement to the police has narrated her ordeal also which she faced one month prior to the lodging of the crime that, the applicant used to molest her in the midnight and used to give threats of dire consequence if she discloses it to her mother. The victim girl in her statement has mentioned the alleged incident which clearly indicates that, the applicant has committed forcible penetrative sexual assault on his own younger daughter. It is to be noted here that, the prosecutrix was examined by the Medical Officer after a gap of more than ten days and therefore there is every possibility that, the important pieces of evidence in the form of injuries might have been healed up in the intervening period.

The Supreme Court in the case of Sheikh Zakir Vs. State of Bihar reported in AIR 1983 SC 911 has held that, absence of any injuries on the person of the prosecutrix who was the helpless victim of rape might not itself discredit the statement of the prosecutrix and in such a situation non production of medical certificate would not be of much consequence, if the other evidence was believable.

6] The Supreme Court in the case of of Aman Kumar And Anr Vs. State Of Haryana [AIR 2004 SC 1497], has held that, there is no rule of law that the testimony of the prosecutrix cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of State of Himachal Pradesh Vs. Shree Kant_Shekari reported in AIR (2004) SC 4404.

7] The statement of the prosecutrix appears to be reliable and trustworthy. The statement of elder daughter of the applicant who was also minor, prima facie also appears to be reliable and trustworthy and requires no further corroboration. In view of the heinous nature of crime committed by the applicant, this Court is of the view that the applicant does not deserve for any sympathy from this Court.

8] After taking into consideration the aforesaid aspects of the present case which shows clear complicity of the applicant in the crime, serious allegations against the applicant and the gravity of the offence, this Court is of the considered view that, the applicant does not deserve to be

released on bail.

9] Application is accordingly rejected.

(A.S.GADKARI, J.)

Anil
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