

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

BAIL APPLICATION NO. 1517 OF 2018

Sagar Kisan Parte

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Ganesh S. Shelar for the Applicant.

Ms. J.S.Lohokare, APP for the State.

Mr. V.D.Ghorpade, Police Constable, Medha Police Station, Satara, present.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : OCTOBER 30, 2018.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid applicant, who is arrested in Crime No. 52 of 2018 registered with Medha Police Station for offences under Section 376(2), 307, 377, 323, 506 of Indian Penal Code and under Section 4, 6, 8, 10, 12 of Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Shelar, the learned Counsel for the applicant. He submits that the applicant is a young boy and that the victim was in

love with the applicant. He submits that the applicant is not involved in commission of the said crime. He further submits that the medical evidence does not corroborate the statement of the victim. He, therefore, submits that the applicant is entitled for bail.

3. Ms. Lohokare, the learned APP submits that the statement of the victim prima facie indicates that the applicant had subjected her to rape. There are also allegations that the applicant had strangled her and further abused and threatened her.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The records prima facie indicate that the aforesaid crime was registered pursuant to the FIR lodged by the prosecutrix.

5. The prosecutrix is 14 years old child. The applicant is the brother of the paternal aunt of the prosecutrix. The prosecutrix has claimed that while she was sleeping she found someone touching all over her body. When she woke up, she saw that the applicant was touching her, when she tried to raise an alarm, the applicant threatened her. The applicant thereafter removed her clothes and took her nude photographs. The applicant had shown her the nude

photographs and threatened to show the said photographs to others. In the year 2015, the applicant showed her some obscene/porn video clips and told her to have sexual relationship with him. She has stated that the applicant used to have sexual intercourse with her under the threat of circulating her nude photographs. She has stated that the applicant had threatened to cause her death in case she disclosed the incident to anyone. She has further stated that in December, 2017 her paternal aunt had found the said mobile phone and suspected that the applicant herein was having relationship with the prosecutrix. She has stated that in February 2018 one of the friends of the applicant questioned her as to why she was not keeping relationship with the applicant. She was scared that the applicant would once again start harassing her in the same manner, hence she narrated the incident to her grandmother and thereafter lodged the FIR.

6. It may be mentioned that Section 29 of POCSO Act raises presumption that when a person is prosecuted for committing or abetting or attempting to commit offence under Section 3, 5, 7 and 9, the Court shall presume that such a person had committed or abetted

or attempted to commit the offence, unless the contrary is proved.

7. In the instant case, the statement of the prosecutrix prima facie reveals that the applicant who is related to the prosecutrix had time and again subjected the prosecutrix to grave sexual abuse. The prosecutrix was barely 14 years of age, when the applicant had first started sexually abusing her. He continued such sexual abuse till the year 2017.

8. It may be mentioned here that the prosecutrix was sent for medical examination. The records prima facie reveal that the Medical Officer has merely stated that there were no injuries on the body of the prosecutrix. The prosecutrix was examined about 3-4 months after the incident, and as such there was no possibility of noticing any external injury over the body. It is seen that the Medical Officer has not given any finding as to the genital condition of the victim. The said report does not record any finding as to whether the hymen of the victim was intact or whether there were fresh or healed hymenal tears. Furthermore, without examining the applicant and without there being any finding, the Medical Officer, District Hospital Satara, vide letter dated 23rd October, 2008 has

opined that the victim was not subjected to rape.

9. The offences such as rape against minors are of serious nature. The medical evidence is one of the essential corroborative piece of evidence. Hence in such cases, the Medical Officer is expected to examine the victim and record all details in the examination report. In the instant case, though the victim was examined on 15th March, 2018, most of the columns including the column no.25, wherein the Medical Officer was required to give final opinion are kept blank. The Medical Officer has treated the matter in a most casual manner which is not expected, specially from the Medical Officer attached to Government Hospitals.

10. As stated earlier, in the instant case, the statement of the victim prima facie indicates that the applicant has subjected her to rape from the time she was 14 years of age. Prima facie there is no reason to disbelieve the testimony of the victim. The medical evidence would have supported the case of the victim. Nevertheless, the fact that the Medical Officer has not recorded a finding cannot be a ground for disbelieving the victim, particularly in view of the presumption under Section 29 of POCSO Act. The applicant is

closely related to the victim and in the event he is released on bail, there is every possibility of the applicant pressurizing the victim and her family members and thereby interfering with the administrative justice.

11. Considering all the above facts and circumstances, in my considered view, this is not a fit case for grant of bail. Hence the application is dismissed.

(ANUJA PRABHUDESSAI, J.)