

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1060 OF 2018

IN

CRIMINAL APPEAL NO.854 OF 2018

RANJAN LAXMAN RAMNATHKAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Taraq Sayyed a/w. Ms.Lochan Chandka, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 5th OCTOBER 2018

P.C. :

1 By this application, the applicant/accused, who is convicted of offences punishable under Sections 376(2), 354 and 506 of the Indian Penal Code as well as under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012, is praying for suspension of sentence and releasing him on bail

during pendency of the appeal filed by him. The applicant/accused is sentenced to suffer rigorous imprisonment for 20 years apart from imposition of fine of Rs.50,000/- and default sentence of rigorous imprisonment for 6 months for the offence punishable under Section 376(2) of the Indian Penal Code as well as under Section 6 of the Protection of Children from Sexual Offences Act.

2 Heard the learned counsel appearing for the applicant/accused at sufficient length of time. He took me through the papers of medical treatment of the victim child who is examined as PW1. My attention is drawn to the notings in the bed-head ticket dated 8th May 2013 whereat it is stated that the PW1/victim child had attempted to consume phenyl after arguments with her mother. She was stated to be case of Impulsive Deliberate Self Harm. It was pointed out that mother of the PW1/victim child had given consent for DAMA Procedure on 10th May 2013. My attention was drawn to the noting in the bed-head ticket dated 11th May 2013 whereat it is mentioned that the PW1/victim child was infact discharged on 10th May 2013 but she

had no relatives at the hospital and when her relatives were contacted telephonically, they threatened the staff members. With the aid of these medical papers it is argued that subsequent thereto, the PW1/victim child is claimed to have narrated the incident to the sister/nurse working in the hospital and that is how the First Information Report (FIR) came to be lodged.

3 By taking me through evidence of the PW1/victim child it is argued that her evidence points out that the PW1/victim child was very close to her grandmother, who is examined as PW2. If really the incident, as disclosed, had taken place with the PW1/victim child, then natural conduct expected from her was to go the place of her grandmother and inform the same to her grandmother, instead of alleged belated disclosure to the staff working in the hospital. It is further argued by pointing out the material elicited from the cross-examination of the PW1/victim child that she was aware about lodging the report or disclosing the incident of sexual harassment to the Principal of the school, Teacher or her own mother. With this, it is argued that such

normal course of conduct was not adopted by the PW1/victim child.

4 It is further argued that case of the prosecution is inherently improbable. The first incident is said to have taken place at the ground floor of the house whereas the second incident allegedly took place at the mezzanine floor. The applicant/accused is a handicap person whose leg is amputated from the knee. It is further argued that the PW1/victim child has deposed that beside her mother, her brother was sleeping and then the applicant/accused was sleeping and next to him, the PW1/victim child was sleeping. This, according to the learned counsel, is totally improbable, as no mother would allow her daughter to sleep beside the step-father. It is further argued that the PW1/victim child has deposed that it is difficult for the applicant/accused to climb the wooden ladder without railing and to reach at the mezzanine floor, and therefore, second incident of penetrative sexual assault is totally improbable.

5 My attention is also drawn to the admissions elicited from cross-examination of the PW1/victim child. It is pointed out that after the incident, for about 7 to 8 months, the PW1/victim child was roaming at Rajkot and Karnataka. She had eloped with a boy named Munir Ali and stayed with him at Karnataka. On the basis of her report, said Munir Ali is also facing the trial for the offence of rape.

6 The learned counsel further argued that grandmother of the PW1/victim child has projected herself as an employee of the NGO and was earning her livelihood through the money provided by the NGO. She can to go any extent to rope the applicant/accused falsely in the crime in question. When the PW1/victim child has stated that she had disclosed the incident to her grandmother Sagaya Lazrus, who is examined as PW2, it was expected of the grandmother to take action in the matter. This was not done and such conduct is totally abnormal.

7 With this, the learned counsel for the applicant/accused argued that the applicant/accused had met with an accident and he has received compensation in respect of the bodily injury caused to him. The applicant/accused has purchased a hut at Cuffe Parade area of Mumbai and that property is very precious and costly. To grab that property, the applicant/accused is being falsely implicated in the crime in question. Hence, as the applicant/accused was on bail during pendency of the trial, he is entitled for bail.

8 As against this, the learned APP argued that, at the stage of consideration of the matter from the angle as to whether bail is required to be granted or not, meticulous examination of evidence is not required. The offence is held to be proved by the learned trial court. Cross-examination of the PW1/victim child goes to show that she attempted to consume phenyl because she was more aggrieved with her mother. Despite disclosure of the happenings to her mother, her mother told her that if the applicant/accused would leave them, then there would be nobody

to take care of them. The learned APP argued that it is not possible to comprehend child psychology, and therefore, it cannot be said that the conduct of the PW1/victim child, who happens to be a female aged about 13 years, is abnormal.

9 I have considered the rival submissions and also perused copies of deposition of prosecution witnesses.

10 Evidence of the PW1/victim child goes to show that when she was 1½ years of age, her biological father deserted her mother. She was then taken by her grandmother and she stayed with her grandmother till attaining age of 10 years. Thereafter, she joined company of her mother, who by then had married the applicant/accused. It is seen from her evidence that their house is comprising of a ground floor and mezzanine floor.

11 Date of birth of the PW1/victim child is 11th April 2000 as seen from the certificate issued under the provisions of Registration of Birth and Death Act, 1969. The incident, according

to the prosecution case, took place firstly in the year 2012 and secondly on 20th January 2013. As per version of the PW1/victim child, in the year 2012, when she was sleeping with her mother, brother and the applicant/accused, the applicant/accused had committed penetrative sexual assault on her at about 2.30 a.m. The PW1/victim child has disclosed that the second incident of penetrative sexual assault on her took place when there was nobody in the house on 20th January 2013. As per her version, at that time, the applicant/accused was at the mezzanine floor of the house and he demanded tea from her. When she went to serve the tea, the applicant/accused committed penetrative sexual assault on her.

12 The PW1/victim child has stated in her evidence that on each occasion, she had disclosed the incident to her mother, but her mother did not take cognizance thereof. Version of the PW1/victim child further shows that the applicant/accused used to torture her and used to insist her to act in the blue film.

13 Papers of medical treatment of the PW1/victim child goes to show that she was admitted at the government hospital with the history of consumption of phenyl after arguments with her mother. From cross-examination of the PW1/victim child, it is brought on record that on the date of the incident, she was very annoyed with her mother as she was not listening to her. Prima facie this material will have to be read with her version in the chief examination that despite disclosure of incident to her mother, her mother was not paying any heed to her. Therefore, it cannot be said that the incident of consumption of poison was purely attributable to conduct of her mother, who was having no nexus with the alleged incident. Even medical papers which are pointed out, do suggest that there was nobody at the hospital even to take the PW1/victim child back to home. Papers of medical treatment of the PW1/victim child do show that at one point of time, her mother gave consent for DAMA test. This happened on 10th May 2013. However, on 11th May 2013, there was nobody to take her to her house despite her discharge from the hospital on 10th May 2013 itself. It was on this day, according to the

prosecution case, the PW1/victim child has disclosed the incident of penetrative sexual assault on her to the staff working in the hospital.

14 The PW1/victim child, at the relevant time, was just 13 years of age. At such age, at this stage, it is not possible to conclude that she would rope in her step-father only in order to grab the house property belonging to her father. When her mother was not present with her on 11th May 2013, there is no scope to conclude that at the instance of her mother, she had falsely implicated the applicant/accused in the crime in question, by way of disclosure of the incident to third person i.e. staff of the government hospital.

15 The PW1/victim child was a female child aged about 13 years. She was staying at the mercy of her step-father as well as her mother. As per her version, despite disclosure of the incident to her mother, her mother was not taking cognizance thereof. As such, in such situation, it was not expected of the

PW1/victim child to take any offensive steps in the matter, particularly, considering her age. Therefore, it cannot be said at this stage, that the entire prosecution case is wholly improbable and unjustifiable. Leaving the house after reporting the matter to the police and roaming with some boy is not sufficient to cast shadow of doubt on version of the PW1/victim child and that too, after lodging the report to police. This conduct is prima facie attributable to the fact that her step-father was arrested by police thereafter.

16 In the light of the foregoing discussion, considering the nature of offence and the material available on record, no case for grant of bail is made out.

17 The application is, therefore, rejected.

18 Needless to mention that, all these observations are prima facie in nature and shall not have any bearing on the final hearing of the appeal.

19 The hearing of the appeal is expedited.

(A. M. BADAR, J.)

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