

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

CRIMINAL APPEAL NO.777 OF 2017

Mr. Balkrishna (Balu) Pandurang Shinde	..Appellant
Versus	
The State of Maharashtra and another	..Respondents

Mr. Niranjan Mogre i/by Mr. Kuldip T. Pawar, Advocate for the Appellant.

Mrs. S. V. Sonawane, APP for the Respondent - State.

**CORAM : B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE : 8th FEBRUARY, 2018**

PC.

1] The Appeal challenges the order passed by the learned Additional Sessions Judge, Khed Rajgurunagar, dated 21st August 2017, thereby rejecting the application filed by the Applicant for grant of regular bail.

2] The prosecution case is that the Applicant has committed forcible rape on prosecutrix who is mentally retarded. The prosecutrix belongs to Scheduled Caste, whereas the Applicant does not. As such, apart from charges punishable under Sections 376, 376(2)(I), 323 and 506 of the Indian Penal Code, the Applicant is also facing charges for the offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3] The Application is vehemently opposed by the learned APP. She submits that the delay in lodging FIR has occurred, since the First Informant i.e. the mother of the prosecutrix was out of station and only after she came to know the the victim could inform her about the incident.

4] As held by the Apex Court in the case of Niranjan Singh and another Vs Prabhakar Rajaram Kharote and others reported in (1980) 2 SCC 559 detailed elaboration of evidence should be avoided at the stage of grant of bail.

5] However, it is to be noted that though the incident is alleged to have taken place on 13th February 2017, FIR is lodged on 20th February 2017. No doubt, as submitted by the learned APP, the First Informant i.e. the mother of the prosecutrix had gone out of her village. However, even according to her she met the prosecutrix on 16th February 2017 at Junnar. There is no explanation as to why an FIR was not lodged from 16th February 2017 to 20th February 2017, specifically when the prosecutrix as well as the First Informant i.e. the mother of the prosecutrix had gone to Junnar on 16th itself, where the police station is situated.

6] Apart from that the perusal of the statement of the

prosecutrix would reveal that she has given version that the Applicant has forced himself upon her and she has resisted. However, the medical evidence would reveal that there are no injuries on the private parts or any part or on the person of the prosecutrix. The prosecution has not produced alongwith charge-sheet a copy of the report of the medical examination of the Applicant.

7] In that view of the matter, we find that the application deserves to be allowed. The Applicant is directed to be released on bail on furnishing bail bond in the sum of Rs.25,000/- with one or more sureties in the like amount. The Applicant shall not enter the area of Junnar during the pendency of the trial and shall not make any attempt to impress the witnesses.

8] The Applicant shall give his address to the Police Station Officer, Junnar Police Station and shall report to Wagale Estate Police Station, Thane on every Monday between 8.00 a.m. to 10.00 a.m.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]