

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2909 OF 2018

Vishal @ Lakhan Bapu Pagare
(At present lodged in Nashik
Central Jail)

...Applicant

V/s.

The State of Maharashtra

....Respondent

* * * * *

Mr. Anilkumar K. Patil, Advocate for the applicant.

Ms. P.P. Shinde, APP for the respondent-State.

Coram : Sandeep K. Shinde, JJ.

Saturday, 22nd December, 2018.

P.C. :

1. The applicant was arrested on 7th January, 2018 in Crime No. I-02 of 2018 registered with Vadner Khakurdi Police Station, Taluka-Malegaon, District- Nashik for the offences punishable under Sections 376(2)(i)(j) 323, read with Section 34 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act,

2002.

2. Heard learned Counsel for the applicant and learned APP for the State.

3. Perused the chargesheet. The allegation is of penetrative sex assault by the applicant on 6th January, 2018. The victim at the relevant time was 16 years old. The complaint was lodged on 7th January, 2018. The applicant came to be arrested on 7th January, 2018. The investigation is over and the chargesheet is filed.

4. The chargesheet consists of complaint, her statement under Section 164 of the Criminal Procedure Code, statement of her father and his statement under Section 164, statement of mother and grand-mother of the victim. The statements of Asha Bacchav, Shailesh Bacchav and Santosh Ugalmugale were recorded on 9th January, 2018 as could be seen from the index of the chargesheet but these statements are not produced for perusal.

5. After the alleged incident, the victim was

examined by the Gynecologist on 7th January, 2018. It is observed therein;

(i) P/S examination : Tenderness-absent,

(ii) hymen-no tear/no rupture.

(iii) Opinion-hymen-no rupture-no tear.

5. The spot panchanama was drawn which is at page no.35 of this application. Map is drawn at page-38 (Column-9 of the Crime Details Form). The map and the discussion in the panchanama shows that the alleged incident had taken place in the backside of the house of the victim. It shows that, beyond the kitchen there is an open space and wall of 3 feet constructed around the house. The wall is 25 ft in length and its height is 3 ft. It is alleged that the incident of sexual assault had taken place between the wall of the kitchen and the outer wall of 3 feet height on the northern side of the house. The gallery is shown in the open space on the northern side of it. The map therefore shows the place of the incident is hardly 22 to 25 feet away from the place of the incident.

6. I have perused the complaint, her statement under Section 164, as well as, the statement of the victim's mother and father. It is alleged by the victim that on the date of the incident, there was programme in the neighbour's house and loud music was being played. It is alleged by her, that her family members had gone to attend the said programme and she was alone in the house. It is alleged that, at 10 p.m. the accused entered the house from the rear door and asked for glass of water. It is alleged that, the accused pulled her, by hand towards the open space between the compound wall having height of 3 feet and the wall of the kitchen and against her wish committed the sexual assault. It is alleged that, thereafter she started shouting and her father responded and came to the house. It is alleged the accused ran away after seeing her father. It is alleged that her father had gone to the house of the accused and narrated the incident. However, the two brothers of the accused, beat her parents.

7. The statement under Section 164 was recorded, wherein she reiterated the complaint. It shows that at the

given point of time when the alleged incident had taken place, her parents and family members had gone to attend some programme and loud music was played very loudly. As against this, statement of grand-mother and mother of the victim shows that at the time of the alleged incident, all were watching programme/ceremony from the gallery of the house. The panchanama and the map shows that the gallery is in the open space behind the kitchen and the outer wall which is of 3 feet height. Thus, even according to the prosecution, as could be seen from the map, the distance between the gallery and the place of the incident was not more than 22 feet.

8. The father of the victim in the statement recorded under Section 164 has stated that, all members had gone to attend the programme/ceremony. The complaint also stated the same. However, statement of the mother and the grand-mother if read with the map drawn on the spot panchanama would show that, all of them were watching programme/ceremony from the gallery. In fact, the father stated in his statement that the victim pleaded with the

accused not to commit the sexual assault repeatedly but he did not listen. This statement is absent in her complaint, as well as, in her statement under Section 164 Criminal Procedure Code which was recorded on 9th January, 2018. It may be stated that, the prosecution ought to have examined, Pinto Jagtap who appears to be the neighbour of the complainant where the programme was held. The map shows his house on the southern side of the victims house. The programme/ceremony was in the house of Pinto Jagtap. His statement has not been recorded. Besides, as per the statement of the grand-mother and mother of the victim, they were watching the ceremony from the gallery of the house. The said gallery is on the northern side of the house, house of Pinto Jagtap is on the eastern side of the house.

9. Thus, taking into consideration the facts of the case, the statements of the witnesses and after examining the medical report a gist of which I have reproduced hereinabove, in my view, a case is made out for granting bail to the applicant. Hence, the following order :

O R D E R

(I) The application is allowed;

(ii) The applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(iii) The applicant is directed to submit the address of his place of residence to the Investigation Officer within one week from today;

(iv) The applicant shall attend the nearest Police Station available in the village where he is going to stay, once in a fortnight, every Tuesday commencing from 2nd January, 2019;

(v) Once the charge is framed, liberty is

granted to the applicant to make an application before the learned Sessions Judge seeking permission to stay in his village i.e. Samvidhan Nagar, Malegaon Camp, Taluka-Malegaon, District-Nashik. The learned Sessions Judge shall decide the application as the circumstances may warrant;

(vi) the applicant shall not tamper the prosecution evidence in any manner;

(vii) With the above directions, the application stands disposed of.

(SANDEEP K. SHINDE, J)