

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

BAIL APPLICATION NO. 12 OF 2019

Vijay Shrirang Babar	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondents

Mr. Aniket Nikam @ Aashish Satpute i/b Mr. Vivek Arote for the Applicant.
Mr. A.R. Kapadnis, A.P.P. for the Respondent – State.
Mr. Surel Shah for Intervener.

CORAM : P.N. DESHMUKH, J.

DATED : 25th APRIL, 2019.

P.C. :

1 Accused involved in Crime No.457 of 2018 registered with Karmala Police Station, Solapur, for the offence punishable under Sections 376(2)(i), 506 of I.P.C. and Sections 4 and 8 of POCSO Act, has applied for bail. It is material to note that on the earlier date of hearing on 10.04.2019 prosecution was directed to seek instructions with regard to her medical examination and opinion of doctor if prosecutrix is subjected to physical assault. On the same day directions were issued to prosecution to keep Investigating Officer present. However, neither the medical report with regard to the medical examination of prosecutrix is placed on record nor Investigating Officer is present.

2 In the circumstances, learned Counsel for applicant who submitted that applicant is falsely involved by prosecutrix as applicant being related to her had took her to Karmala Police Station to lodge report against her father who had inappropriately touched her. It is contended that on the basis of report offence was registered and father of prosecutrix was tried in which trial prosecutrix turned hostile. It is specific case of applicant that as he had taken her to lodge report against her father, having this grudge in mind pending trial of her father on 30.05.2018. False report is lodged against applicant involving in the present crime on 30.05.2018. Perusal of documents filed in the application being judgment in a trial wherein father of prosecutrix came to be acquitted would substantiate such submissions as prosecutrix did not support the case of prosecution. Copy of report lodged by her upon which prosecution was initiated against her husband would reveal that applicant had taken prosecutrix to Karmala Police Station for lodging report on 20.11.2017. Since prosecutrix did not support in the case of prosecution, her father came to be acquitted on 26.07.2018. There appears much substance in the case of applicant establishing his false involvement by prosecutrix for above reason in her report dated 30.5.2018.

3 Even considering the case of prosecution on merits from the report lodged by mother of prosecutrix as well as prosecutrix first incident

alleged against applicant to have sexually assaulted her, is of March 2018 when applicant was said to be residing in the house of complainant. Second incident is of one month thereafter when applicant on extending threats to prosecutrix is alleged to have taken her in his vehicle. Prior to above dates other incidents are of December, 2017, January and February 2018 when applicant is alleged to have taken prosecutrix to hotels at Village Tembhorni, where they indulged into physical relations. Perusal of report and statement of prosecutrix, thus reveals of such incidents prior to and during the period from March 2018 to April 2018 of which report is lodged on 30.05.2018.

4 Perusal of medical certificate dated 30.05.2018 refers to history of incident given by prosecutrix wherein she claims to have sexually assaulted by applicant in the first week of May 2018 which is nobody's case either in the report or in the statement of prosecutrix as according to these documents the last incident is said to have occurred in the hotel Vishwajit at Tembhorni sometime in January or February 2018.

5 Having considering above facts and case set out on behalf of applicant as aforesaid, application is liable to be allowed. Hence following order :

ORDER

(i) Applicant shall be released on bail in C.R. No.457 of 2018 registered with Karmala Police Station, Solapur, for the offence punishable under Sections 376(2)(i), 506 of I.P.C. and 4 and 8 of POCSO Act, on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount;

(ii) While on bail, applicant shall mark his presence with the Police Station within whose jurisdiction he resides at Village Nagav, Taluka Alibag and shall not enter Village Pangare, Taluka Karmala, District Solapur, during the pendency of trial.

(iii) Application stands disposed of as allowed.

(P.N. DESHMUKH, J.)