

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1111 OF 2019

Vitthal @ Ganesh Ramesh Shinde] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Rohan Barge, Advocate for the Applicant.

Mr. Rajan Salvi, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 31st JULY, 2019.

P. C. :-

1. The applicant is seeking bail in connection with C.R.No. 301/2018 registered with Mohol Police Station, District Solapur Rural u/sec. 363, 366-A of I.P.C. and u/sec. 12 of The Protection of Children from Sexual Offences Act, 2012 (POCSO Act). At the time of filing of charge-sheet Section 376 (2) (i), (n) of I.P.C. and u/sec. 4 of The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) are added.

2. The applicant is arrested on 05/06/2018 and since then he is in custody.

3. The FIR initially was lodged by maternal uncle of the victim on 20/04/2018. He has stated in his FIR that, the victim was 16 years of age. She had left for her school on 10/04/2018 and till filing of FIR did not return. It is mentioned in the FIR that, the present applicant had abducted the victim.

4. The investigation is over and the charge-sheet is filed. The charge-sheet shows that the victim was pregnant.

5. The charge-sheet contains the victim's statement recorded u/sec.161 of Cr. P.C. as well as u/sec. 164 of Cr. P.C. Apart from that, there is medical evidence which records the history given by the victim herself. There are statements of witnesses who had seen them together.

6. Heard Mr. Rohan Barge, Ld. Counsel for the Applicant and Mr.Rajan Salvi, Ld. APP for the State/Respondent.

7. Ld. Counsel for the applicant submitted that, the applicant himself is a young boy and was 21 years of age at the time of incident.

He submitted that, the statement recorded u/sec. 161 of Cr. P.C. on 05/06/2018 shows that, the victim was having love affair with the applicant and both of them eloped together. The victim had gone with the applicant of her own will. He submitted that, though the statement u/sec. 164 of Cr. P.C. is incriminating against the present applicant, that statement is recorded belatedly on 11/07/2018. By this time, the victim was completely under control of the first informant i.e. her uncle. He submitted that, the story narrated u/sec.164 of Cr. P.C. statement does not appear to be true.

8. Ld. APP submitted that, the offence is serious and the statement recorded u/sec. 164 of Cr. P.C. shows involvement of the present applicant.

9. I have considered the submissions. The statement recorded u/sec. 161 of Cr. P.C. is the statement given by the victim at the earlier point of time i.e. on 05/06/2018. That statement clearly mentions that, the victim was knowing the applicant since one year prior to the incident. The applicant had put forth a proposal of eloping together. On 07/04/2018, the victim had appeared for her last examination paper. She left her village with the applicant and his

friend Savata Waghmare. They first went to Akkalkot, then to Tuljapur. At Tuljapur they got married. Thereafter, they stayed at Fulchincholi for about 8 days. In the meantime, they came to know that, FIR was lodged against the present applicant. Thereafter, they came to Pune and they stayed in a room of one Lahu Kamble. Thereafter, they resided at Ahmednagar and then at Yavat. Thereafter, they went to Pandharpur, Sangli, Vijapur and Mohol. She has stated that, during their stay together, they had physical relations and she became pregnant. This statement was recorded in presence of her paternal aunt and a lady police constable. Thus, it was not given under pressure. The applicant was also arrested on 05/06/2018.

10. As against this statement, the statement recorded u/sec. 164 of Cr. P.C. gives a totally different colour to entire episode. It is mentioned in that statement that, the applicant and his friend forcibly abducted her in a four wheeler. She was taken to Shingadgaon and she was thereafter taken to Tuljapur. She was forced to marry the present applicant and thereafter she was detained in a room. During all this time, the applicant established physical relations forcibly against her wish.

11. Thus, apparently the statement recorded u/sec. 164 of Cr. P.C. implicated the present applicant. However, it is important to note that, this statement was recorded after more than a month from her first statement. The subsequent statement was recorded on 11/07/2018. In the meantime, the prosecutrix was produced for medical examination on 06/06/2018. There, the medical officer had recorded history given by the prosecutrix. In that history, she had clearly admitted to her love affair and sexual relations. Therefore, the statement recorded by the independent medical officer also carries weight. Apart from this story, there are statements of witnesses who had seen the couple together at different places. These witnesses are Narsingh Harpale, Sandeep Kadam and Pravin Bagal. All these witnesses have stated that, they had seen the couple together and the applicant had told them that, the prosecutrix was his wife. At that time, the prosecutrix had not protested and not lodged any report or any complaint against the applicant. So the story narrated u/sec. 164 of Cr. P.C. statement that she was locked in a room is not corroborated by these statements.

12. Considering this background and also taking into account the

fact that, the applicant himself was of only 21 years of age at the time of incident and that there were love affair between him and the prosecutrix, I am inclined to grant him bail. The trial will take a long time to conclude. The investigation is already over. No purpose will be served by denying the bail to the applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No. 301/2018 registered with Mohol Police Station, District Solapur Rural, on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)