

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1618 OF 2019

Sourabh Hanmant Indalkar, Age 20 years,
Occ.Student, R/o.Vakhari, Tal.Phaltan,
District Satara (Presently lodged at Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Vishal Kolekar with Kasturi Ghadshi i/by Randhir A Kale for
applicant.

Smt.Geeta P. Mulekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 13th December 2019

PC :

1. The applicant is arrested on 2nd March 2019 in connection with CR No.90 of 2019 registered with Phaltan City Police Station. Initially the FIR was registered for offences u/s 376(g), 307, 325 r/w 34 of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012. However, in view of change in version of the complainant, the charge sheet was filed for offences u/s 354(d), 307, 325 r/w 34 of IPC and under Sections 4 and 6 of POCSO Act.

2. In short, the case of the prosecution as reflected in the FIR is that the victim was acquainted with the accused. The FIR was lodged on 2nd March 2019. On 27th February 2019 the applicant and his associates had subjected the victim to sexual assault and she was thrown in the valley. It is also alleged that prior to that she was accompanying the applicant and her friend Pragati. Both of them

proceeded together. Subsequently the applicant had left them and went in different direction. The applicant and Pragati then proceeded together. After some time the victim realized that Pragati was not with her. When she halted, some unknown person tried to help her to call to her mother. At that time the aforesaid incident had occurred. The charge sheet does not refer to the passer by who was trying to help her and no such statement is recorded. It is pertinent to note that supplementary statement of the victim was recorded on 20th April 2019. In the said statement although she has maintained that she was thrown in the valley by the accused, she stated that the incident of sexual assault did not occur. She also stated that the accused had not caused any injuries to her neck and chest. The applicant was accompanying another unknown person. Thus in the supplementary statement the victim has resiled from her version of sexual assault.

3. The statement of victim was also recorded u/s 164 of Cr.PC. In the said statement the victim has reiterated her version appearing in the supplementary statement. The statement of villager Shankar Barkade was recorded. He had stated that on 27th February 2019 at about 8.30 to 9 pm, he heard some lady shouting for help. The witness along with others went to the valley and traced the victim. She had sustained some injuries on her person on account of falls.

4. The investigation is completed and charge sheet is filed. Learned advocate for applicant submitted that the victim has concocted the story of having assaulted and thrown her in the valley. She has drastically changed her version in the supplementary statement. There is no eye witness to corroborate the fact that she

was thrown in the valley. Except version of the complainant which is doubtful, there is no evidence to establish involvement of the applicant. The statement of witnesses recorded during the course of investigation indicate that the victim was in relationship with the applicant.

5. Learned APP submitted that there is consistency in the version of the complainant with regards to the allegation that she was thrown in the valley. She had sustained some injuries. Although charge sheet was not filed for offence u/s 376 of IPC, the offence u/s 307 is made out.

6. Having perused the documents on record it can be seen that the victim has resiled from her initial statement with regards to sexual assault by applicant and other unknown person. Thus, there is major contradiction in the complaint and the supplementary statement. The statement of victim u/s 164 of Cr.PC is in consonance with her supplementary statement. She has sustained minor injuries. No other person had seen the accused throwing the accused in the valley. The statement on record also record that the victim was friendly with the applicant. In view of change in her version, the allegations made by the victim are required to be considered with caution. The applicant is in custody from 2nd March 2019. There are no criminal antecedents against him. Hence, case for grant of bail is made out. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.1618 of 2019 is allowed and disposed of;

- (ii) The applicant is directed to be released on bail in connection with CR No.90 of 2019 registered with Phaltan City Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in like amount;
- (iii) The applicant shall not enter within the jurisdiction of Phaltan City Police Station till conclusion of trial;
- (iv) The applicant shall furnish details of his residence where he would reside after being released from jail, to the Investigating Officer;
- (v) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)

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