

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.86 OF 2019

Parshuram Tukaram Bhoje, Age 40 years,
Occ.Nil, R/o.Post Shegaon, Pawarpada,
Tal. And District Palghar.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Gautam T. Kanchanpurkar for applicant.

Mr.Prawhant Jadhav, APP, for State.

Ms.Madhuri B. Nalawade, PSI, Palghar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th March 2019

PC :

1. This is an application for bail under Section 439 of Code of Criminal Procedure, 1973 in connection with CR No.I-98 of 2018 registered with Bhoisar Police Station for offences under Section 376(2)(i) of Indian Penal Code and under Section 6 of Protection of Children from Sexual Offences Act. The FIR was lodged by mother of victim on 22nd April 2018. The statement of victim was recorded u/s 161 and u/s 164 of Cr.P.C. It is alleged that the applicant is the neighbour of victim. When she was alone in the house, the applicant-accused has threatened the victim and subjected her to sexual intercourse. The incident had occurred about five to six occasions. It is also alleged that the victim had thereafter conceived. On completing investigation, charge sheet has been filed. The applicant was arrested on 22nd April 2018 and since then he is in custody.

2. Learned advocate for applicant submitted that the FIR was lodged belatedly. The victim was major at the time of incident. He relied upon school leaving certificate which indicates the birth date of victim as 2nd July 2000. Learned counsel further submitted that the prosecution has not collected the birth certificate. The forensic medical examination report regarding estimation of age of the victim states that she was 17 years plus 6 months. It is further submitted that in the statements u/s 161 and 164 of Cr.P.C, the victim has stated that there was physical relationship on about 5 to 6 times between applicant and the victim. Learned counsel for applicant submits that the relationship is apparently consensual in nature.

3. Learned APP submitted that the victim was minor at the time of incident. The accused had threatened her of dire consequences and subjected her to sexual assault. The victim was pregnant after she was subjected to sexual assault.

4. I have perused the charge sheet. The date of birth reflected in the school leaving certificate relied upon by the advocate for applicant indicates that the victim was around 18 years of age at the time of incident. The statements of victim recorded u/s 161 and 164 of Cr.P.C mentions that the accused was residing near her house. He used to visit her house. They were acquainted with each other. The first incident is not mentioned in the statement. It is also stated that on five to six occasions thereafter, there was physical relationship between them and thereafter she was pregnant. The incident was informed to her mother on 20th April 2018.

5. Considering the allegations in the FIR and allegations of the victim and circumstances referred hereinabove, further detention of the applicant is not called for. Consensual intercourse had occurred on about six to seven times as stated by the victim. It also appears that the victim was major at the time of incident.

6. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.86 of 2019 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-98 of 2018 registered with Bhoisar Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Bhoisar Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by Trial Court for some reasons.

(PRAKASH D. NAIK, J.)

MST