

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.107 OF 2019

Vaibhav Bhanudas Ubale] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Aniket Nikam i/b Mr. Vivek Arote, Advocate for the Applicant.
Ms. S.S. Kaushik, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 18 JUNE, 2019.

P. C. :-

1. The applicant is seeking anticipatory bail in connection with C.R. No.194/2018 registered with Koregaon Park Police Station, Pune u/sec. 376 of I.P.C. and under Section 3, 4, 8 and 12 of The Protection of Children from Sexual Offences Act, 2012.

2. The FIR is lodged on 07/11/2018 at the instance of prosecutrix. The FIR was lodged with a story that the prosecutrix was taken in a car belonging to one Sonu Tapkir and at a secluded place he committed rape. At that time, the prosecutrix was less than 18 years of age. The prosecutrix did not inform about the same to anybody.

However, when her pregnancy was in advanced stages her mother came to know about the incident. She gave birth to a child on 06/11/2018. After that the FIR was lodged.

3. After registration of this FIR, her supplementary statement was recorded on 09/11/2018 by PSI Koregaon Park Police Station. He was a different police officer than the one who had recorded the FIR. In her supplementary statement, the prosecutrix has stated that her friend Swati under false pretext took her to the present applicant's flat and in that flat by giving some stupefying substance to the prosecutrix three persons including present applicant committed rape on her. Since the prosecutrix was scared, she did not inform about the same to her mother and ultimately in her advanced stage of pregnancy her mother came to know about the incident.

4. In her supplementary statement, she has stated that she had lodged the FIR at the instance of one police officer who had forced her to narrate a false story in her FIR.

5. This court vide order dated 15/01/2019 (Coram : Nitin W. Sambre J.) had taken serious note of this fact and had directed the Joint Commissioner of Pune to deal with the issue by issuing appropriate instructions to the Investigating Officer in the matter of carrying out further investigation. Today in the court a sealed envelope was produced. The envelope was opened in the court. It contained a letter address by the Joint Commissioner of Police, Pune

City to the Registrar (Judicial – I). It is mentioned in the letter that with reference to the subject appropriate instructions as regards to the investigation had been issued to the Investigating Officer and departmental inquiry is proposed against the erring police officer.

6. It is rather unfortunate that in respect of such a clear statement made by the prosecutrix and in spite of the directions issued by this court earlier vide order dtd. 15/01/2019, merely a departmental inquiry is proposed against the erring police officer. The Investigating Officer has not produced any material showing any investigation in respect of the allegations made by the prosecutrix against the police officer in her supplementary statement. In continuation of the earlier directions issued by this court, further directions are issued to the Investigating Officer that he shall investigate the allegations made by the prosecutrix in her supplementary statement in respect of the active role played by the erring police officer.

7. In so far as the present application is concerned, the supplementary statement shows that the prosecutrix was raped by three persons one after the other. The applicant was one of them.

8. Ld. Counsel for the applicant submitted that there is gross delay in lodging the FIR. He submitted that initially the FIR was lodged against one Sonu Tapkir. He further submitted that it is not possible to even imagine that a mother of the prosecutrix would not have come to know about her pregnancy. He therefore submitted that the entire

case is false and applicant deserves to be released on bail. He further submitted that DNA Test can be conducted to verify the paternity of the child.

9. Considering the serious allegations in the supplementary statement, the offence clearly is a very serious offence. The prosecutrix has explained that she was scared and it was quite natural in her position not to have lodged the FIR immediately. In so far as her mother not taking steps immediately is concerned, in such a situation, it is not unnatural that a mother of the victim would not be keen to approach the police. Therefore, I do not find any substance in the submission of Ld. Counsel for the applicant that the FIR is lodged belatedly.

10. The contention that the FIR was initially lodged against one Sonu Tapkir has to be rejected, because the prosecutrix in her supplementary statement has explained that she was forced to concoct the story to involve Sonu Tapkir at the instance of the police officer.

11. The third submission that DNA Test should be conducted is also unacceptable. There are allegations of rape by three persons. The prosecutrix did not know the other two persons. So the DNA report would not be conclusive in this case. Looking at the gravity of the offence and the manner in which the investigation has progressed so far, custodial interrogation of the applicant is absolutely necessary. It is hoped that the Investigating Officer treat this case with all the

seriousness against all the accused involved in the offence. Therefore, there is no merit in the case. Hence, the following order.

ORDER

Application is rejected and stands disposed of accordingly.

(SARANG V. KOTWAL, J.)