

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

CRIMINAL BAIL APPLICATION NO. 1334 OF 2019

Balumama @ Ramdas Dnyanoba Lashkar ...Applicant

Vs.

State of Maharashtra ...Respondent

- Mr. Priyal Sarda I/b Mr. Sachin T. Zalte, Advocate for the Applicant.
- Smt. A. A. Takalkar, APP for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th JULY, 2019

P.C. :

1. The applicant is seeking bail in connection with CR No. 675/17 registered at Shikrapur Police Station, Pune.
2. The FIR is lodged by mother of the victim on 23rd December 2017. She has stated that her daughter was mentally challenged. She was admitted to residential school at Pabal, Shirur, Dist. Pune. She was taking education there since past nine to ten years. On 22nd December 2017, she was informed by a school teacher that her daughter was not well. The parents took her to one doctor and it was found that she was pregnant. The mother took her in confidence and made inquiry. That time the victim told her that

somewhere in months of October to November the present applicant used to take her to a TV room and used to threaten her. On such threats he used to commit rape on her. Victim further informed that she had informed one teacher Manisha. Thereafter, the victim was admitted to hospital and this FIR was lodged.

3. The applicant was arrested on 24th December 2017. The victim delivered a child. The investigation was carried out and chargesheet is filed.

4. Heard, Mr. Sarda, learned counsel for the applicant and Smt. Takalkar, learned APP for the State.

5. Mr. Sarda submitted that the chargesheet contains a DNA report which specifically rules out the possibility that the present applicant was a biological father of the child. He submitted that from 12th October 2017 to 1st November 2017 and from 22nd November 2017 to 21st December 2017 victim was not in the school. Therefore, applicant has not committed any offence as alleged. He submitted that when her medical examination was conducted on 23rd December 2017, she was shown to be pregnant. He submitted that on that day she was nine weeks and five days

into her pregnancy. He also relied on a letter dated 21st December 2017, which is annexed to this application at page no. 102. This letter does not form part of the chargesheet. In that letter it is mentioned that the victim had informed her class teacher that one vegetable vendor had committed rape on her. He further submitted that the offence could not have taken place because in the hall there were other inmates.

6. Learned APP submitted that the statement of the victim is clear enough. She has clearly blamed on present applicant. She submitted that the statements of Charushila Jadhav and Sonali Kadam included in the chargesheet do not support the claim of the applicant that the victim had blamed the vegetable vendor for the offence. She submitted that the offence is very serious and applicant does not deserve to be released on bail.

7. I have considered these submissions. The statement of the mother of the victim shows that the victim had taken name of the present applicant. It is true that the DNA report rules out the possibility that the applicant is the biological father of the child. Insofar as the applicant is concerned, the allegation against him

are clear enough, the statement of the victim also mentions the manner in which the offence is committed.

8. Mr. Sarda submitted that the statement by itself does not show that the applicant had committed actual rape. Considering that the victim was mentally challenged girl, she could describe the incident as much as it was possible for her to describe. Even then, reading her statement makes out the case of commission of rape against the present applicant. She was specifically asked questions about the incident and she had given answers to the questions put to her.

9. I see no reason to disbelieve her statement at this stage and interpret in the manner in which Mr. Sarda wants to interpret. The incident alleged against the applicant is a different incident, which she had narrated to her mother and she had narrated in her statement. The act of the applicant has not resulted in her pregnancy. But, at this stage, there is sufficient material against the present applicant to attract the offence defined under Section 375 of the IPC apart from the offence under Section 4 of the POCSO. The victim was a special child with her limitations.

Therefore, the offence assumes even more serious proportion. Her pregnancy could have been caused by another person. Considering her limitations, it is hard to believe that she could have falsely implicated the applicant.

10. In this view of the matter, considering the gravity of the offence and nature of allegations against the applicant and also the material against him, I am not inclined to grant bail to this applicant. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)