

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 BAIL APPLICATION NO. 1044 OF 2020

PRAVIN S/O VASANT SHINDE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. V.D. Salunke with Mr. M. V. Salunke
APP for Respondent-State : Mr. A.S. Shinde
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CORAM : V. K. JADHAV, J.
DATED : 8th OCTOBER, 2020

PER COURT:-

1. The applicant is seeking bail in connection with crime No. 150 of 2019 registered with Dindrud police station, Tq. Majalgaon, District Beed for the offences punishable under Sections 376(1) of I.P.C. and Section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. His Misc. Criminal application bearing No. 153 of 2020 with similar prayer came to be rejected by the learned Additional Sessions Judge, Majalgaon vide order dated 18.6.2020.

2. Learned counsel for the applicant submits that the investigation is now over and the charge sheet has been submitted. The applicant is 19 years of age and is taking education. As per the allegations made by the victim, thrice the applicant has committed sexual intercourse with her in the month of May, 2019. Learned counsel submits that the victim has not disclosed the incident to anybody till 6.9.2019. On 6.9.2019 the victim had pains in her

abdomen and thus subjected to sonography wherein doctor has diagnosed the pregnancy of four months. The victim has thereafter disclosed the incident to her parents. Learned counsel submits that DNA report is negative and present applicant is not the biological father of the foetus. Learned counsel submits that the applicant is young person having no criminal history. The applicant is having a fixed place of residence. The applicant is available for trial. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that the victim was 13 years and 3 months of age at the time of incident. She could not understand the nature of the act committed with her by the applicant in the month of May, 2019. The victim has taken it as a fun and therefore, she did not disclose the said incident to anybody. However, after detecting the pregnancy the victim has promptly disclosed the incident with the name of the applicant to her parents. Learned A.P.P. submits that though D.N.A. report is negative weight is required to be given to other material and evidence on record, particularly to the statement of the victim, which is consistent. Learned A.P.P. submits that prima facie, there is strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that the victim has not

disclosed the incident to her parents till her pregnancy was detected i.e. 6.9.2019. It further appears that the applicant so also the victim are young persons and as per the allegations made by the victim in her statement that they have committed the said act as a matter of fun.

5. So far as the report of DNA test is concerned, which has now come in negative, in the case of **Mukesh Vs. State for NCT of Delhi** reported in **(2017) AIR SC 2161**, the Supreme Court in para No.216 has made the following observations:-

"216. In Pantangi Balarama Venkata Ganesh Vs. State of Andhra Pradesh, (2009) 14 SCC 607 a two-Judge Bench had explained as to what is dna in the following manner :

"41. Submission of Mr Sachar that the report of dna should not be relied upon, cannot be accepted. What is dna ? It means :

"Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings is the blueprint of an individual. Dna decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting, identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred per cent precise, experts opine."

There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high molecular weight dna, complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. (See article of Lalji Singh, Centre for Cellular and Molecular Biology, Hyderabad in dna profiling and its applications.) But in this case there is nothing to show that such precautions were not taken.

42. Indisputably, the evidence of the experts is admissible in

evidence in terms of Section 45 of the Evidence Act, 1872. In cross-examination, PW 46 had stated as under :

"If the dna fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same dna fingerprint is around 1 in 30 billion world population."

6. It thus appears that the Supreme court has upheld the scientific accuracy of the DNA report. In the case of ***Premjibhai Bachubhai Khasiya vs. State of Gujarat and Anr, reported in 2009 CRI.L.J. 2888***, the Gujarat High Court has observed the positive DNA report can be of great significance, where there is supporting evidence, depending of course on the strength and quality of that evidence, even if it is positive, it cannot conclusively fix the identity of the miscreant, but, if the report is negative, it would conclusively exonerate the accused from the involvement of charge. However, in the case of ***Sunil Vs. State of Madhya Pradesh*** reported in ***(2017) 4 Supreme Court Cases, 393*** in paragraph No.4, the Supreme Court has made the following observations :

"4. From the provisions of Section 53-A of the Code and the decision of this Court in Krishan Kumar it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar (para 44), Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be

considered. It is to the other materials brought on record by the prosecution that we may now turn to."

7. As per the observations made by the Supreme Court, a positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if a DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered.

8. In view of the above, it is for the trial court to consider the evidence of the victim alongwith other evidence on its own merits including the effect of negative DNA report during the trial. However, the case is made out to grant bail to the applicant. The applicant is young person having no criminal history. It further appears that the alleged act has not been committed with intention to commit rape and it has been done as a matter of fun. The applicant as well as the victim were less than 20 years of age on the date of incident. Thus, considering the entire aspects of the case I am inclined to grant bail to applicant on certain conditions. Hence the following order:-

O R D E R

- I. Application is hereby allowed.
- II. The applicant Pravin s/o Vasant Shinde, in connection with crime No. 150 of 2019 registered with Dindrud police station,

Tq. Majalgaon, District Beed for the offences punishable under Sections 376(1) of I.P.C. and Section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 be released on bail on furnishing personal bond of Rs.20,000/- with one solvent surety of the like amount on following conditions:-

- a) The applicant shall not tamper with the prosecution evidence in any manner.
- b) The applicant shall not make any attempt to meet or communicate the victim in any manner till the conclusion of trial.

III. Application is disposed of.

(V. K. JADHAV, J.)

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