

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

CRIMINAL BAIL APPLICATION NO. 2729 OF 2019

Mhalappa Shivaji Takale

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Balwant v. Salunkhe, Advocate for the Applicant.

Smt. Geeta P. Mulekar, APP for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 24th January, 2020

PC :

1. The applicant is arrested in C.R. No. 114 of 2019 registered with Mangalvedha Police Station, Dist. Solapur for offences punishable under Sections 366, 363, 376(2)(i), 376(d), 452, 342, 109, 114, 323, 504 & 506 of Indian Penal Code and Sections 4, 8, 12 & 42 of Protection of Children from Sexual Offences Act 2012.

2. The First Information Report was lodged by the mother of victim on 9th March, 2019, alleging that, her daughter did not return home on 8th March, 2019. Search was conducted with neighbours and relatives but she could not be traced. Hence, the FIR was lodged under Section 363 of Indian Penal Code. The investigation proceeded. Subsequently, the victim returned home on 10th March, 2019. Her statement was recorded. In the said statement she stated

that while she was looking after goats, lady residing in their neighbourhood namely Sakhubai Hake was also with her along with goats. She was repeatedly getting phone calls. While returning home Sakhubai Hake gave her phone number and told her to speak to person on the line. The victim took the phone. The caller told her his name as Mhalu Takale. He told her that he has come to take her along with him. They should perform registered marriage. She should not inform about the same to any person. The victim told him not to come and returned the phone to Sakhubai. She told victim with caller that they should perform proper registered marriage. The victim returned home. Nobody was at home. It was dark. Suddenly, two unknown persons entered into her house. One of them pointed out knife at her and asked her whether she was taking her Aadhar Card. Under the threat she gave Aadhar Card to the said person. She was subjected to forcible sexual intercourse. The other person accompanying him went out of the house. The person who subjected her to sexual assault again threatened her with knife and told her to accompany him. The other person came with motorcycle. Sakhubai Hake was standing there. She was made to sit on motorcycle. Her hands and mouth tied with towel and she was taken to the field. She was again subjected to sexual assault. Thereafter, she was taken to house of some person. The person who subjected

her to sexual assault told his name as Mhalu Takale and introduced her to his parents. The parents of the accused inquired with him about identity of the victim. The parents told him to drop the girl to her house. The accused however stated that he would performed registered marriage with her. The victim was again subjected to sexual assault. He took her Aadhar Card and left the house to find out whether marriage can be performed. Thereafter, he returned home and told his parents that on account of her age he can not be performed marriage. The parents of the accused forced him to drop the victim to her house. She was dropped in Village Boblad and threatened not to inform about the incident to anyone. Statement was also recorded under Section 164 of Cr.P.C. She has reiterated her version reflected in the previous statement. On completing investigation, charge-sheet was filed.

3. Learned advocate for the applicant submitted that victim was aged about 17 years. In the FIR the complainant has stated her age as 17 year and Date of Birth is 01st January, 2002. The Medical report also refers his age as 17 years. The victim had accompanied the accused. The allegations are patently false. The victim sat on the motorcycle and went to the house of the accused which shows her consent. The victim was of the age of understanding. Hence, bail may be granted to the applicant.

4. Learned APP submitted that victim was minor, she was forcible kidnapped by the accused. There was forcible sexual assault. The applicant was a married person. In spite of that the victim was subjected to sexual assault and that the accused has performed marriage with her. The School Leaving Certificate of the victim shows her date of birth as 2nd April, 2005. Thus, on the date of incident the victim was 14 year old. The medical evidence supports the prosecution case. The applicant is aged about 32 years. Hence, bail may not be granted to the applicant.

5. According to the victim, the accused was not acquainted with her. They were not into the relationship. There is nothing to show that they had met earlier at any point of time. The accused spoke to Sakhubai was with the victim. She met the victim to talk to the accused. The victim has thereafter stated that she was threatened her point of knife and she was taken to the residents by the accused. She was repeatedly subjected to sexual assault. Although the complainant has mentioned the age of the victim as 17 years. Thus, the School Leaving Certificate indicate that her age is 14 year. At this stage medical evidence supports the prosecution case. There is huge difference between the age of the accused and the victim. It cannot be said that the relationship was consensual. Hence, she is registered against accused was threatening the witnesses. History

provided during medical examination shows that two unknown person came to the residents of the victim and took the victim with them. She was subjected to sexual assault. The history is inconsonance with the version of the victim in the statement under Section 164 of Cr.P.C. According to the counsel for the applicant there was no injury on the victim and no evidence of injuries to genital. However, in the light of the circumstances in above, bail cannot be granted to the applicant.

6. Hence, I pass the following order.

ORDER

- i) Bail Application No. 2729 of 2019 stands rejected and disposed of accordingly.
- ii) Trial is expedited.

(PRAKASH D. NAIK, J.)