

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.142 OF 2020

Mandira
Salgaonkar

Digitally signed by
Mandira Salgaonkar
Date: 2020.12.11
20:49:18 +0530

Housiram Baban Pardhi .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr.Sachin Pawar for the Applicant.

Mr.S.V.Gavand, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 9th DECEMBER, 2020

P.C:-

1. The applicant aged 32 years is charge-sheeted for the offence punishable under Sections 363, 366-A, 376 of the Indian Penal Code and Sections 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012.

A missing complaint was lodged by the father of the victim girl on 14th May, 2017 alleging that his daughter aged 16 years is missing. In-spite of the search in the nearby locality and inquiry from the relatives and friends, she could not be traced. Offence was, therefore, registered under Section 363 of IPC. Thereafter on 16th August, 2017, the victim girl was found in the company of the present applicant and they were residing in one small hutment at

Khandgaon, Taluka Sangamner, District Ahmednagar. C.R.No.70 of 2017 therefore came to be registered for the offence with which the applicant is charged.

2. The statement of the victim girl is recorded on 16th August, 2017 and her age is mentioned as 17 years 4 months. She has stated that on 22nd April, 2017, the applicant had been to her house and he lured her with promise of marriage and she eloped with him. They sought rescue in the house of one of their friends and on the same night, he forcibly committed sexual intercourse with her. Thereafter till the date of recording her statement, on 4 to 5 occasions, he had forced himself upon her.

3. The learned counsel for the applicant has invited my attention to the statement of the member of Mahila Dakshata Samiti, who was present when the victim girl was brought to the police station and when she gave her statement to the police. The said witness has stated that the victim girl had been to the friend's house alongwith the applicant. She was kept there like his wife. When he attempted to establish physical relationship, she protested on the ground that she is minor and she will not permit the relationship unless and until the marriage is performed. At that time, she reported that the applicant said that he

would marry with her and performed sexual intercourse with her on 4 to 5 occasions. The learned counsel has also placed reliance on the medico legal examination of the victim at the Rural Hospital, Narayangaon, Taluka Junnar. After recording the history given by the victim as sexual assault by accused during the period ranging from 22nd April, 2017 to 15th August, 2017 and that the victim girl was residing with the accused during the said period, the opinion expressed by the Medical Officer is to the following effect :

“Evidence of sexual intercourse/assault cannot be ruled out. Hence final opinion kept pending till FSL report.”

The counsel has invited my attention to the proforma where no injuries are noted on the body of the victim. As far as the injuries on her private parts are concerned, it record that no external injuries are seen. No perineal tear is recorded and as far as the position of hymen and tear is concerned, it is reported in the negative.

4. The medical examination is in the nature of corroboration and there is no reason why the statement of the prosecutrix cannot be believed when she narrated that under the pretext of marriage, she was lured to elope with the applicant and was subjected to the forcible sexual

intercourse. It is informed by the learned APP Mr.Gavand that the applicant is already married and having two children. In the backdrop of the said fact, the submission of the learned counsel for the applicant that there was a love relationship cannot be accepted at this stage. Undisputedly, the applicant is incarcerated for more than three years, but looking into the nature of his involvement into an offence under the POCSO Act where the consent of the minor girl is immaterial, the application deserves rejection and is accordingly rejected.

SMT. BHARATI DANGRE, J