

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

CRIMINAL BAIL APPLICATION NO. 1506 OF 2019

Pritesh @ Barkya Ramesh Gharat ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms. Anjali Patil, Advocate for the Applicant.

Smt. Veera Shinde, APP for the Respondent – State.

Mr. Sanjay Rajaram Jadhav, Head Constable, Nhavasheva Police Station Present

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th February, 2020

PC :

1. This is an application for bail in C.R. No. 94 of 2018 registered with Nhavasheva Police Station for offences punishable under Section 376(1)(i)(n) of Indian Penal Code and Sections 3(A), 4, 5(L) & 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The FIR was lodged by the mother of victim on 24th September, 2018. She has alleged that on 22nd September, 2018, the victim (daughter of complainant) complained of stomach pain. She was taken to hospital and it was revealed that she was pregnant. The age of the victim is 15 years. The victim was questioned above physical relationship. She stated that on 13th June, 2018, the accused Barkya Gharat (Applicant) called her in his house on the pretext that his mother has called her. She was subjected her to sexual assault.

Thereafter, she visited Bhairnath Temple on the mountain in the village and at that time the other accused Nandkumar Amrut Gharat has subjected her to sexual assault. The complainant further stated that the applicant threatened the victim and subjected her to sexual assault on 5 to 6 occasion thereafter. Nandkumar Gharat had sexually assaulted the victim on the rear side of the Bhairnath Temple on 10 to 15 occasions. The statement of other witnesses were recorded. The victim was medically examined. D.N.A. test was conducted and on completing investigation, charge-sheet is filed.

3. Learned counsel for the applicant submitted that the incident attributed to the applicant had allegedly occurred in June, 2018. The victim did not complain nor informed about said incident to her parents or any other person. She has conceived. The incident was reported to her mother and thereafter FIR was lodged. It is submitted that FIR was lodged after deliberations with the medical officer and other relatives. The victim was pregnant for five months and the incident attributed to the applicant has occurred prior to five months. Hence, applicant cannot be held responsible for victims pregnancy. The D.N.A. report indicates that the applicant is not biological father of the child conceived by victim. The applicant is young boy. He is in custody from the date of arrest. There are no criminal antecedents against him.

4. Learned APP submitted that victim was aged about 15 years. She is minor. The accused had subjected her to sexual assault. Consent is immaterial. Assuming that the D.N.A. report is negative qua applicant it cannot be said that the victim was not subjected to sexual assault by the applicant.

5. I have perused the statement of the complainant and other witnesses. The statements of the victim were recorded under Section 161 as well as 164 of Cr.P.C. The prosecution case is that the victim had complained of stomach pain on 22nd September, 2018 and on medical examination it was found that she was pregnant. On enquiring with her she disclosed that she was subjected to physical relationship by the applicant in June, 2018. The victim had not disclosed the incident to her mother or any other person. The victim has also stated that she was subjected to sexual assault on several occasions by co-accused. The FIR has been lodged after noticing that the victim had conceived. The prosecution is relying upon bonafide certificate issued by the school which refers to her date of birth as 14/12/2003. Learned counsel for the applicant submitted that the birth certificate of the applicant was not produced on record. The statement of the victim was recorded on 1st October, 2018. She has stated that she was subjected to sexual intercourse by applicant on 13th June, 2018. She has also stated that, during the same period the

applicant had subjected her to sexual assault 4 to 5 occasions against her wishes. It is also stated that in July 2018 the co-accused had physical relationship with her. In supplementary statement she had stated that she was subjected to sexual assault by the applicant in April or May 2018 and not in June, 2018. The statement under Section 164 was recorded. In that statement she has stated that in the month of May in summer vacation the applicant had sexually assaulted her. She was threatened that the recorded video will be shown to others. In previous statement however, there is no reference of video recording. The statement of the brother of the victim was also recorded. He stated that after deliberations with the Doctor it was decided to lodge complaint against accused. Statement of the sister of the complainant was also recorded on 27th September, 2018. In which it was stated that the victim and the complainant had approached the Doctor and it was revealed that victim was pregnant. From the statement on record it is apparent that the incident had occurred on April/May/June 2018. The victim was allegedly sexually assaulted by the co-accused. The D.N.A. report qua applicant is negative. There was no previous complaint. In the factual matrix of the case and considering the fact that the applicant is in custody from the date of arrest, case for grant of bail is made out.

6. Hence, I pass the following order :

ORDER

- i) Bail Application No. 1506 of 2019 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 94 of 2018 registered with Nhavasheva Police Station on furnishing PR. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till further order.
- iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)