

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

CRIMINAL BAIL APPLICATION NO. 1560 OF 2019

Baban alias Nandu Satpute

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Shailesh D. Chavan, Advocate for the Applicant.

Smt. Veera Shinde, APP for the state-respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 14th January, 2020

PC :

1. This is an application for bail in C.R. No. 652 of 2018 registered with Baramati Police Station, for offences punishable under Sections 376 (2),(L), 504 & 506 of Indian Penal Code. The applicant is arrested on 22nd November, 2018.

2. The FIR was lodged on 30th October, 2018 by the brother of the victim. The case of the prosecution is that the accused is the neighbour of the victim. The complainant received call from his nephew and he was told to come urgently. He is working as driver. On next day the wife of complainant called their nephew who informed about the incident of sexual assault on victim by applicant. Hence, complainant immediately visited place where victim and his brother were residing. He was informed that on 29th October, 2018,

the accused called the victim to his house under the pretext that his mother would give vegetables to the victim. The accused closed the door and had forcible sexual intercourse with the victim. Immediately after the incident the victim had informed the said fact to her nephew. Thereafter, the FIR was lodged on 30th October, 2018. It is alleged that the victim is lady aged about 35 year. It is alleged that the victim is mentally retarded. The statement of the victim was recorded. She was medically examined. Statement under Section 164 of Cr.P.C. was also recorded. On completing investigating, charge-sheet is filed.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. He is in custody from the date of arrest. Charge-sheet is filed. Victim is major lady aged about 35 years. The FIR was lodged on the next day. It is further submitted that, the victim does not have any mental illness. The victim did not shout while she was sexually assaulted. Her statement is vague. Medical evidence do not support prosecution case.

4. Learned APP submitted that there is sufficient evidence against the applicant. The victim was mentally retarded. The statements of the victim were recorded under Sections 161 and 164 of Cr.P.C. Specific overt act is attributed to the applicant. Medical evidence

supports the prosecution case.

5. I have perused the document on record. The charge-sheet contains certificate issued by department of Psychiatric B.J. Government Medical College, and Sasoon General Hospital, Pune about Psychiatric assessment report dated 4th December, 2018. In the said report it is mentioned that the victim does not have mental illness at present. Her IQ is 52 and she is suffering from Mild Intellectual Disability. She is fit to appear for trial in the Court and can narrate the details of alleged incident in age appropriate manner. Thus the certificate indicates that, although the victim is not suffering from mental illness she was suffering from Mild Intellectual Disability. The victim in her statement on 30th October, 2018 recorded immediately on the next day stated that she was subjected to sexual assault by the applicant. It is pertinent to note that victim had immediately informed about the incident to her brother. Subsequently, the statement of the victim was recorded under Section 164 of Cr.PC. The said statement corroborates her version reflected in statement recorded under Section 161 of Cr.PC. Medical examination support prosecution case. The version of the victim is consistent in the both the statements. The applicant contends that Such incident had not occurred. It is a false case. There is no reason for victim to falsely implicate applicant. The statement of the victim

cannot be brushed aside. It also cannot be said that it was consensual physical relationship. The history provided by victim during medical examination is consistent with her version. Medical examination papers mentions that hymen not intact. During medical examination the accused provided information that sexual intercourse with lady was with her consent. Hence, no case for grant of bail is made out.

ORDER

- i) Bail Application No.1560 of 2019 stands rejected and disposed of accordingly.
- ii) The observations made in this order are prima facie for considering the application for bail and the trial Court shall not be influenced by the same during the trial.

(PRAKASH D. NAIK, J.)