

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

BAIL APPLICATION NO.1598 OF 2019

Manohar Dhondiba Dhage	.. Applicant
<i>Vs</i>	
The State of Maharashtra	.. Respondent

**WITH
INTERIM APPLICATION NO. 1 OF 2019
IN
BAIL APPLICATION NO. 1598 OF 2019**

Asha Shivanand Gaikwad	.. Applicant
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IN THE MATTER BETWEEN:

Manohar Dhondiba Dhage	.. Applicant
<i>Vs.</i>	
The State of Maharashtra	.. Respondent

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Mr. Vikas B. Shivarkar, Advocate for the Applicant.
Mr. Sachin M. Bhavar h/f. Abhay A. Jadhavar for the intervenor.
Smt. A. A. Takalkar, APP for the Respondent - State.
Smt. D. S. Zadte (PSI), Shivaji Nagar Police Station, Pune City.

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CORAM : PRAKASH D. NAIK, J.

DATED : 06th FEBRUARY, 2020.

P.C. :

This is an application in connection with C.R.No.349 of 2018, registered with Shivaji Nagar Police Station, Pune. The First Information Report ("FIR", for short) was lodged on 4th December, 2018, for offences punishable under Sections 376(2)

(i), (1) and 377 of Indian Penal Code (“IPC”, for short). The applicant was arrested on 4th December, 2018.

2 The FIR was lodged by mother of victim. The victim is mentally handicapped girl. She cannot speak. She explained herself by making signs. The age of victim was 28 years. The complainant is working as a sales woman in a clothes shop. Thus, the victim used to be alone at home. On 30th November, 2018, the complainant went for work. She returned home at about 8:30 p.m. She noticed victim in frightened condition. She had fever. She was in a disturbed state of mind. The complainant inquired with her the reason for her disturbance. She did not say anything. On the next day also the victim was hesitant to talk with the complainant. On 2nd December, 2018, the victim was again found in a frightened condition. The complainant took her into confidence and spoke to her. The victim told the complainant that on 30th November, 2018, Dhagemama had called her at his house. She further stated that the accused had pressed her chest and then inserted his private part into her vagina and anus. She explained this by making signs. The victim also stated that on earlier occasion also the accused had subjected her to such assault. However, she could not mention the date of the previous

incident. The complainant discussed this issue with the relatives. They approached the police. The police called the teachers from handicapped school and members of peace committee. The victim also explained them the manner in which she was sexually assaulted by the accused by making signs. The FIR was registered on 4th December, 2018.

3 The accused was arrested. Victim was medically examined. Statements of witnesses were recorded. On completing investigation, charge - sheet was filed. The applicant had preferred an application for bail before the Court of Sessions. The said application was rejected by order dated 30th March, 2019.

4 Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant is in custody since long time. Investigation is completed and charge - sheet is filed. The prosecution case is full of contradictions. The medical evidence does not support the case of the prosecution. Sections 376 and 377 of IPC have no application to the present case. The applicant is suffering from various ailments. He is a senior citizen. The medical examination shows that there is no evidence of vaginal penetration.

5 Learned APP submitted that the accused had taken undue advantage of the situation. The victim is mentally handicapped lady. She has narrated the incident to the complainant and others. The statements of the witnesses confirm the narration of the incident by the victim. The medical evidence shows that the possibility of sexual assault cannot be ruled out. The statement of the victim was also videographed. The version of the victim and other witnesses before whom the victim has narrated the incident cannot be brushed aside at this stage. The statement of the victim was recorded under Section 161 as well as Section 164 of Cr.P.C. in which by making signs the victim has explained the manner in which she was sexually assaulted by the accused. Learned APP pointed out the disability certificate which mentions that the victim is a case of intellectual disability. The diagnosis in her case is severe intellectual disability. She has 90 percent disability. The bail is also opposed by the intervener/complainant. It is contended that the victim was undergoing treatment for disability since her childhood. She was subjected to sexual assault by the applicant - accused.

6 The complaint is filed by the mother of victim. On

perusal of the statement of complainant, it is apparent that the victim used to be at home alone. On 30th November, 2018, she was sexually assaulted. The victim as found in a disturbed state of mind. She was under fear. Subsequently she has disclosed the incident to her mother. The victim was narrated the incident by making signs which indicates that she was subjected to sexual assault. The statement of the victim was recorded under Section 161 as well as Section 164 of Cr.P.C. The said statement also indicates that by signs and gestures, the victim has explained the way in which she was sexually assaulted by the accused. The statement was made in the presence of the witnesses, such as the Principal of handicapped school and the members of peace committee. Their statements are recorded. The disability certificate shows that the victim is case of intellectual disability and diagnosis indicates that she has severe intellectual disability. Even considering the medical examination, it has to be considered that the victim has categorically referred to the way in which she was sexually assaulted, and, even the medical report indicate that the possibility of sexual assault cannot be ruled out. In the circumstances, no case for grant of bail is made out. However, considering the fact that the applicant is in custody from the date of arrest and the age of the applicant, the trial can

be expedited.

Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1598 of 2019, is rejected;
- (ii) Interim Application No.1 of 2019, is disposed of;
- (iii) Trial is expedited.

(PRAKASH D. NAIK, J.)