

Sneha N.
Chavan

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

CRIMINAL BAIL APPLICATION NO. 1920 OF 2019

Rushikesh @ Bhaiyya Sharad Suryawanshi .. Applicant
V/s.

The State of Maharashtra and Anr. ..Respondents

Mr. Prawartak Pathak for the Applicant.

Mr. H.J. Dedhia, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 04th DECEMBER, 2020

P.C.

1. The applicant is facing prosecution for the offence punishable under Section 376(2)(i)(j), 323, 506 of I.P.C. and Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short)

2. The prosecution case as disclosed from the statement of the prosecutrix, who at the relevant time was a girl aged 16 years, is that on 24.12.2018, the prosecutrix had gone to a grocery shop for purchasing some snacks and chocolate and while she was returning at about 7.00 p.m., the applicant who was known to her, took her in

a by-lane and had forcible sexual intercourse with her twice. As a result of that the clothes of the prosecutrix were torn and they were stained with blood. She somehow managed to come home and on inquiry, disclosed the incident to her mother, who lodged the complaint on 25.12.2018 with police station Satana, on the basis of which, the offence came to be registered and after investigation a chargesheet is filed.

3. The learned Sessions Judge has refused to release the applicant on bail.

4. I have heard Mr. Pathak, the learned Counsel for the applicant and Mrs. Mhatre, the learned APP for the respondent-State. With the assistance of the learned Counsel for the parties, I have gone through the record.

5. Mr. Pathak, the learned Counsel for the applicant strenuously urged that the medical report of the prosecutrix does not corroborate her version of she being sexually abused. The learned Counsel for the applicant has taken me through the medical report in order to point out that there were no injuries found on the person of the prosecutrix and the opinion expressed is also not conclusive,

inasmuch as the medical officer has only expressed a “possibility of intercourse in past”. He submitted that thus, the medical evidence entirely rules out the possibility of the prosecutrix being subjected to the forcibly sexual intercourse. He submitted that the prosecutrix has referred to a person called ‘Bhaiyya’ who had allegedly subjected to her forcible sexual intercourse. He submitted that the presence of the injuries on the person of the applicant cannot prima facie show the complicity of the applicant in the alleged incident. He submitted that the investigation is complete and chargesheet is filed. At one stage, it was also submitted that the possibility of incident being out of consensual relationship cannot be ruled out.

6. The learned APP has submitted that the applicant has been named and has been identified in the identification parade and the applicant has failed to explain the injuries on his person. It is submitted that reliance placed on the medical report of the prosecutrix is also misplaced. It is submitted that there is prima facie case of the applicant having been involved in the incident and looking to the nature of the offence, the applicant is not entitled to be released on bail.

7. I have considered the circumstances and the submissions made. A careful perusal of the statement of the prosecutrix shows that she has named a person called Bhaiyya. That apart, the applicant has also been identified in the Test Identification Parade conducted on 11.01.2019. It can prima facie be seen that the prosecutrix has stated that her clothes were torn and were stained with blood after the incident, which is prima facie supported by the seizure panchnama of the clothes of the prosecutrix which shows that there were blood stains. The clothes were seized on 26.12.2018. There are injuries on the person of the applicant including abrasion on his private part to the extent of 1 to $\frac{1}{2}$ c.m. The reliance placed on medical report of the prosecutrix as rightly pointed out by the learned APP is misplaced. Prima facie it can be seen that according to the prosecutrix, she was threatened with knife and had surrendered and there was no resistance offered by her. Therefore, the absence of injuries on her person is not material. Prima facie what is significant is that her hymen is not shown to be intact. Considering the over all circumstances, I do not find that the applicant is entitled to be released on bail.

8. In the result, the Criminal application is dismissed.

9. It is made clear that the observations herein are essentially of a prima facie nature and the learned Sessions Judge shall not be influenced by the same at the trial.

C.V. BHADANG, J.