

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2372 OF 2019

Shyam Maruti Shingade .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Rakesh Patil for the Applicant.

Mr. Suraj S. Hulke, A.P.P. for the State.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 09TH DECEMBER, 2020.

P.C:-

1. The Applicant is seeking his release on bail, being charge-sheeted in C.R. No.363 of 2018 registered with Ghodegaon Police Station, Pune for the offence punishable under Section 376 of the IPC. In the said CR, facing accusation of committing rape on the prosecutrix and making her pregnant, he came to be arrested on 25/02/2019 and since then, he is confined to the prison.

2. The FIR came to be registered on 24/12/2018 with Ghodegaon Police Station, Pune on the report by the police personnel pursuant to an enquiry being conducted under Section

174 of the Cr.P.C. The new born baby was found to be of the prosecutrix, who is aged 18 years and 8 months and was born in still condition. When the statement of the prosecutrix was recorded, she is alleged to have stated that around seven months back, the exact date and time, she did not recollect, when she was all alone in the room, the Applicant came to her house and established physical relationship with her. She did not disclose the said incident to her parents or to any of her relatives. Thereafter, on 20/12/2018, when she was in the ITI Hostel in Ranjangaon, she had pain in her stomach and started bleeding and admitted to YCM hospital, Pimpri-Chinchwad. Doctors attending her informed her parents about it and, at that time, the prosecutrix realised that before seven months when she was minor, the Applicant had forced himself upon her and out of this relationship she conceived. This resulted into registration of FIR under Section 376 of the IPC. The statement of the prosecutrix came to be recorded on 05/01/2019 when she narrated the incident which took place in June, 2018 and it is alleged by her that the Applicant was known to her and he came to her house when she was all alone and subjected her to forcible sexual intercourse. She alleged that after eight days of incident, he again came to her house and threatened her that he would kill her parents and again committed sexual intercourse with her. In the month of August, 2018, when she did not get her menses, she was referred to the Government Hospital in Gangapur. Some tablets were given to her for resuming her menses. However,

when she was in the ITI Hostel, she felt unbearable pain in the stomach and was admitted to the hospital. At that time, she realized the forcible sexual intercourse has resulted into pregnancy but a still baby was born. On 22/12/2018, she had told the police that she has no complaint against anyone. She retracted the said statement on the pretext that her mental condition was not good. Her statement of 22/12/2018 is also perused. She has stated that the incident had happened when she was aged 17 years but now she has attained majority and, therefore, she has no complaint against the Applicant. She also stated that on 22/12/2018, the representative of Mahila Athyachar Virodhi Samithi went to her and they pressurized her to give complaint but she did not intent to lodge the complaint. The statement was recorded in the presence of her mother.

3. The Bail Application preferred by the Applicant seeking his release on bail, in the light of the material collected, came to be rejected by the Additional Sessions Judge, Pune as well as this Court on an earlier occasion. The change in the circumstance on which reliance is placed and the release is sought is that the analysis of DNA sample was in process when the earlier Applications were heard. On 28/02/2020, the Regional Forensic Science Laboratory, Pune has forwarded the results of the analysis of the Femur bone of the baby of the prosecutrix and it was compared with DNA profiling of the present Applicant, which was collected from his blood. The

report, after analysis of the genetic systems interpreted with the genetic systems analyzed with PCR, matches with the maternal alleles present in the Femur bone of the baby to whom she had given birth. But on analysis of 15 different genetic systems with PCR of the present Applicant, with the obligate paternal alleles present in the Femur bone of the baby, do not match. The opinion, therefore, is to the effect that the present Applicant is excluded to be biological father of Femur bone of the baby.

4. In the light of the said DNA report and after referring to the material compiled in the charge-sheet, *prima facie*, it can be seen that only when the baby was delivered, the prosecutrix complained about the incident of sexual assault. She has also attributed that the baby is born out of the said act committed by the Applicant, forcibly. However, since the report of the DNA analysis does not connect the Applicant to the still baby, which was born to the prosecutrix, though not excluding the possibility for him being responsible for the forcible sexual intercourse, which would be determined at the time of trial, the Applicant is entitled to be released on bail. Since he is incarcerated for more than 1½ years, he is released on bail subject to certain conditions. Hence, the following order:

ORDER

- (a) The Applicant – Shyam Maruti Shingade shall be

released on bail in C.R. No.363 of 2018 registered with Ghodegaon Police Station, District Pune on executing P.R. bond to the extent of Rs.20,000/- and furnishing one or two sureties of the like amount.

(b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall not enter the jurisdiction of Taluka Ambegaon, District Pune, during the pendency of trial and mark his attendance once in two months in the Court of Sessions Judge, Khed-Rajgurunagar, District Pune where the case is committed.

5. The Application is allowed in the aforestated terms.

6. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.