

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

CRIMINAL APPEAL NO.935 OF 2019

Vinod Devidas Deshmukh

...Appellant

vs.

The State of Maharashtra

...Respondent

Mr. Harihar Bhawe a/w Divya i/b Bhawe & Co. for the Appellants
Mr. S. R. Shinde, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI,
ACTING CHIEF JUSTICE &
N. R. BORKAR, J.**

DATE : 5/3/2020.

PC.:

. Appellant/accused in custody since 12/2/2018 is before this Court seeking release on interim bail during trial.

2. Offences registered against him are under sections 376(2)(J) (L) and section 363 of IPC and under sections 3, 7, 8, 9 and 10 of POCSO Act and under section 3(11) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.

3. We have heard learned counsel for the appellant and learned APP and learned advocate for respondent No.2/ complainant.

4. Complainant is the mother who has given statement initially on 12/2/2018 and thereafter on 19/2/2018. She states that victim is specially abled (mentally retarded) and on 12/2/2018 she appeared for examination in ITI subject. She did not return when her colleagues came

back. Mother made inquiries but could not trace her out. Victim came back alone at 3.10 p.m. and at that time blood was oozing from her upper lip. Upon inquiry she has disclosed the incident which she reported to police.

5. In supplementary statement on 19/2/2018 she has stated that her daughter disclosed to her about serious sexual assault.

6. On record we have the disability certificate issued by the Government of Maharashtra which shows that victim is 90% mentally retarded.

7. The prosecution could not record the statement of victim under section 164 of Cr.P.C.

8. The Investigating officer has on 2/4/2018 reported to the concerned Court that the complainant and victim expressed their disability to remain present and sought adjournment. However, thereafter no such statement has been recorded.

9. Medical examination of victim does not contain any positive material in support of assertions. However, at the end the Medical Officer has put remark "findings of sexual assault/intercourse cannot be ruled out, hence final opinion pending till FSL report"

10. It is to be noted that there is no report of any intercourse by the complainant/victim to the investigating officer

11. Investigation is already over, charge-sheet is filed and accused has already put in more than 2 years in prison. During argument it is pointed out to the Court that accused is residing in neighbourhood of

complainant and victim. Learned counsel for the appellant in order to show bonafide states that the appellant shall not enter the area of Thane city. Victim is now taking education in same college at Thane. We therefore find it proper to prohibit the appellant from entering limits of Thane city during pendency of trial. The appellant shall also not attempt to contact complainant or any prosecution witnesses in the matter.

12. In this situation, we are inclined to release the appellant on bail during the pendency of the trial on the following terms and conditions :

- (a) The appellant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount;
- (b) He shall give address at which he shall always be available during the pendency of trial along with his contact numbers;
- (c) Similar details in relation to his sureties shall also be furnished;
- (d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter;
- (e) His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith;
- (f) Appeal is accordingly allowed and disposed of.

(N. R. BORKAR, J.)

(ACTING CHIEF JUSTICE)