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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Cr. Bail Application No. 3546 of 2019

Smt. Surekha Dayanand Dandinwar ... Applicant
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Kuldeep U. Nikam, for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

Mr. Shriram Chaudhary, for Respondent No. 2.

CORAM : C. V. BHADANG, J.

DATE : SEPTEMBER 21, 2020
(Through video conferencing)

PC :

1. The applicant (Accused No. 3) alongwith the co accused is facing prosecution for the offence punishable under section 370, 372, 373, 366 (A), 376(1), 324, 504, 506 read with Section 34 of IPC and Section 4,7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”, for short).

2. The complainant / victim, at the time of lodging of the complaint on 18th July 2019 had attained the age of 18 years, and is a major now. The prosecution case, as disclosed from the complaint and the statement of witnesses, is that the victim was found by the mother

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of the present applicant, behind the Miraj Bus stand when the victim was only a day old. It was the mother of the present applicant and after her, the applicant who maintained and brought up the victim, as her own child. According to the complainant / victim, somewhere in June 2016, Ms. Sunita Khot (Accused no 2) had seen the victim in a marriage of the sister of the complainant. It is said that after some days Sunita Khot came to the house of the applicant alongwith Shaila Bhore (Accused No. 1). There was some talk between the three of them. After this, Shaila Bhore took the victim to a Notary at Miraj and clicked photographs of the victim while sitting on the lap of Shaila Bhore. In short, according to the prosecution, the victim was shown to be given in adoption to Shaila Bhore.

3. It is the material prosecution case that Shaila Bhore treated the victim well for initial period of two months and then ill-treated her on some or the other pretext. In October 2017 when the victim was studying in 8th standard she had accompanied Shaila Bhore (whom she refers as her mother) to Burli taluka Palus for a *URUS* where they stayed at the house of one lady, who is referred to as a Begum. It is here that the accused No. 1 Shaila Bhore is alleged to have introduced the complainant to Rohit Asude (Accused No. 4) and

it was Shaila Bhore, who prevailed upon the victim, to make friends with Rohit. It is said that in the night of the incident, Rohit had stayed with them and had forcible sexual intercourse with the complainant / victim. The perusal of the complaint shows that the complainant has alleged ill-treatment and abuse at the hands of the accused Nos. 1 and 2 that is Shaila Bhore and Sunita Khot.

4. On the basis of a complaint dated 18th July 2019, an offence came to be registered against the applicant and others and after investigation a charge sheet is filed.

5. The learned Special Judge has refused to release the applicant on bail vide order dated 16th November 2019 in POCSO Case No. 82 of 2019.

6. I have heard the learned counsel for the applicant and the learned APP and the learned counsel for the complainant. Perused record.

7. On hearing the learned counsel for the parties and on perusal of the record, it prima facie appears that the material allegations about the victim being allegedly induced to have sexual intercourse with the accused No. 4 and the subsequent ill-treatment are not against the present applicant. At least, prima facie, it appears that

the allegation insofar as the present applicant is concerned, is that she had given the victim in a purported adoption to the accused No. 1 Shila Bhore. As regards the receipt of some monetary consideration is concerned, the complainant claims that she 'learnt' about the same from her sister Triveni. Prima facie the statement of Triveni does not show that any such amount was parted with or received by the present applicant. In fact, the statement of Triveni recorded on 25th July 2019, would show that the victim went with Shaila Bhore of her own accord when the applicant had refused to give her in adoption.

8. Be that as it may, the investigation is complete and the charge-sheet is filed. In fact, it transpired during the course of hearing that the victim has presently returned back to the applicant and is staying with her. She has filed an affidavit dated 03/09/2020, stating that she has no complaint against the applicant. I would hasten to add that it is not always and in every case that the court would appreciate, accept or act upon, such affidavit/s of the prosecution witness/s filed by the accused. This is because in a given case, this would tantamount to be an attempt to influence or tamper with the prosecution evidence / witnesses. The question whether the court would accept or act upon such affidavit/s at the prima facie stage, would depend upon facts and

circumstances of each case.

9. Coming to the present case, it can prima facie be seen that the victim was brought up by the applicant and was staying with her as her daughter. She has now returned to her house. As noticed earlier and having regard to the fact that the material allegations, about the victim being induced or forced to have sexual intercourse with accused No. 4, are not against the applicant.

10. I find that the affidavit filed by the complainant can be considered at this stage. Considering the overall circumstances, I find that the applicant can be released on bail subject to conditions.

11. Hence the following order.

ORDER

(i) The applicant be released on bail on the applicant executing a PR bond in the sum of Rs 25000/- with one or two solvent sureties in the like amount.

(ii) The applicant shall undertake to remain present before the Special POCSO Court on the dates of hearing.

C. V. BHADANG, J.

