

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 134/2020

(BALWANTSINGH SEVASINGH BHOND (IN JAIL) **VERSUS** STATE OF MAHARASHTRA, THR. PSO
PS HINGNA, NAGPUR & ANOTHER)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.R. Thakur, counsel for the appellant.
Shri A.M. Joshi, A.P.P. for the R-1/State.

CORAM : A.S. CHANDURKAR AND AMIT B. BORKAR, JJ.

DATE : JULY 14, 2020.

Hearing was conducted through Video Conferencing and the learned counsel for the parties agreed that the audio and video quality was proper.

Pursuant to the notice for the final disposal issued earlier, we have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent no.1. The respondent no.2 is duly served.

On 09.09.2019, the respondent no.2 lodged a report alleging therein that on the previous day, four accused including the appellant herein had sought sexually assault her daughter. In the said report, the respondent no.2 has specifically attributed the acts of sexual assault on accused Armaan and Gaurav. Presence of the appellant has been noted as being part of the group and he having inappropriately touched the daughter of the respondent no.2. The victim has thereafter stated that she was dropped on the motorcycle which was being driven by Armaan. On the strength of this report, the appellant came to be arrested on 12.09.2019.

It is submitted by Shri C.R. Thakur, learned counsel for the appellant that according to the statement of the victim recorded on 11.07.2019, the appellant has not been attributed any role in forcible sexual intercourse with the informant. According to the informant, she was inappropriately touched by the appellant and specific acts have been attributed to other accused. He further submits that the subsequent statement recorded while medically examining the victim also do not make any reference to the present appellant. He thus submits that though the charge-sheet has now been filed, the charge is yet to be framed and as the appellant has been behind the bars since 12.09.2019, he may be enlarged by imposing appropriate conditions.

Shri A.M. Joshi, learned Additional Public Prosecutor for the respondent no.1 opposed the appeal. According to him, the statement of the victim dated 11.07.2019 clearly implicates the appellant. The victim being a minor, no indulgence deserves to be shown to the appellant. The presence of the appellant having been noted and there being substantial material against him, it is submitted that the appeal is liable to be dismissed.

On a *prima-facie* consideration of the material on record, we find that in the statement dated 11.07.2019, the victim has specifically named two accused Armaan and Gaurav as having had forcible sexual intercourse with her. Presence of the appellant has been noted and it is stated that he is alleged to have inappropriately touched the victim. Same can also be gathered from the subsequent statement of the victim during her medical examination. Considering the fact that there are no allegations against the present appellant of having had any forcible sexual intercourse with the victim coupled with the fact that charge-sheet has now been filed, as the appellant is behind the bars since

12.09.2019, we are inclined to release the appellant on bail by imposing appropriate conditions.

Accordingly, the appellant is directed to be released on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in like amount. The appellant shall not enter the limits of Police Station Hingna during pendency of the trial. He shall not try to contact the informant, the victim nor shall he take any steps to influence the witnesses. He shall co-operate with the Sessions Court in completion of the trial. By clarifying that the observations made in this order are only for deciding the bail application which observations shall not influence the trial Court, the appeal is disposed of.

This order be communicated to the learned counsel appearing for the parties either on the email address or on WhatsApp or by such other mode, as is permissible in law.

(AMIT B. BORKAR, J.)

(A.S. CHANDURKAR, J.)

APTE