

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LD-VC CRIMINAL BAIL APPLICATION (BA) NO. 660/2020

Sabbir Babbu Shah

-VERSUS-

State of Maharashtra

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri T. Parmar, Advocate for applicant.

Ms. G. Tiwari, Additional Public Prosecutor for
State/Respondent.

CORAM : VINAY JOSHI, J.

DATE : JULY 23, 2020.

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

2. Applicant/accused is arrested by Narkhed Police Station in C.R. No. 124/2020 for the offences punishable under Sections 363, 376(2)(j), 376(3), 323 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act. The applicant claimed bail on the premise of innocence and false implication. The State resisted bail by submitting that applicant

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has committed serious offence of committing rape on minor girl aged 13 years and 8 months. Learned Additional Public Prosecutor pointed out that there were bruises on the left cheek which is a sign of struggle.

3. The victim girl is nearly 14 years of age. Applicant is a nearby resident. It is victims case that on 19.03.2020, the applicant entered in her house and under threat of making her photographs viral, asked to sit on motorcycle and took her near lake. The applicant/accused took her into bushes and under threat, committed forceable sexual intercourse. Thereafter, accused again made her to sit on motorcycle and left her near her house.

4. The learned counsel for the applicant submitted that the case of prosecution is of forceable sexual intercourse on a minor girl aged 14 years. According to him, in the circumstances, there must be evidence of struggle and violence. Admittedly, within 10 hours from the occurrence,

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victim minor girl was medically examined. Though there is reference of bruises over left cheek, the major report does not speak about any marks of violence. Medical Officer has specifically opined that there is no evidence of any external injury. On examination of genital parts, it was found normal and particularly hymen was intact. Moreover, it is opined that no evidence of any tear or injury on the hymen.

5. True, though Doctor has concluded that possibility of sexual intercourse cannot be ruled out but that is of-course a possibility. The entire medico legal report nowhere supports the allegation of forceable sexual intercourse on minor girl that too on rough surface. Having regard to these facts and as the investigation is complete and charge-sheet is filed, applicant/accused can be released on bail by putting certain conditions. Hence, following order:-

6. The applicant – Sabbir Babbu Shah is released on bail on his furnishing P.R. Bond of Rs.

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25,000/- with one or two sureties in the like amount.

7. The applicant/accused shall attend concerned Police Station on every Monday between 10.00 a.m. to 12.00 noon till conclusion of trial.

8. The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

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

JUDGE

Gohane.