

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 362 OF 2021

Mohit Mahesh Soni

Applicant

Versus

The State of Maharashtra & another

Respondents

Mrs. C.R. Kutti, Advocate for the applicant.

Mr. V.M. Kagne, APP for respondent/State.

Mrs. R.L. Jakhade, Advocate for respondent No. 2.

CORAM : M.G. SEWLIKAR, J.

DATE : 2nd December, 2021.

PER COURT :

1. Heard.

2. It is the prosecution case that the victim aged 17 years 3 months is the niece of the informant. On 20th September, 2019, the victim was not seen in the house. Therefore, informant and his family members started searching for the victim. When she was not found, informant realised that she was kidnapped by someone. Accordingly, missing report was lodged. On conducting investigation, it was revealed that applicant had kidnapped the victim. It was also

revealed that applicant had sexual intercourse with the victim. Therefore, First Information Report came to be registered under Sections 363, 376(1), 506 of the Indian Penal Code and under section 3(a)/4 of Protection of Children from Sexual Offences Act.

3. Smt. Kutti, learned counsel for the applicant, submits that at the time of the incident, the victim was of the age of understanding and was capable of understanding the consequences of her acts. She submits that the statement of the victim indicates that the victim on her own had accompanied the applicant. Her statement further reveals that she had stolen Rs.10,000/- from the cupboard of her uncle. She further submits that medical evidence is not supporting the prosecution. Medical Officer has not given opinion whether the victim was subjected to sexual assault. She submits that the entire statement of the victim shows that she had taken initiative in eloping with the applicant. She further submits that the applicant and the victim are in romantic relationship. She places reliance on the cases in the matter of Kiran Kumar vs. State of Madhya Pradesh reported in (2001)9 Supreme Court Cases 211, Aarif Amin Shaikh vs. The State of Maharashtra reported in 2007 SCC OnLine Bom 4161, Devanand Rajabhau More vs. State of

Maharashtra reported in 2018 SCC OnLine Bom 3610, Vitthal Shrirang Kamble and others vs. State of Maharashtra reported in 2019 SCC OnLine Bom 7296, Ittarsingh S/o Janaklal Dahikar vs. The State of Maharashtra reported in 2018 SCC OnLine Bom 5759, Suraj Manik Thombre vs. The State of Maharashtra reported in 2016 SCC OnLine Bom 10197 and Wasim Tainur Sayyed vs. State of Maharashtra and another in Bail Application No. 868 of 2021.

4. Learned APP submits that medical evidence shows that victim's hymen was ruptured. Smt. Jakhade, learned counsel for respondent No. 2, adopted the arguments of learned APP.

5. It is true that at the time of the incident, the victim was of the age of understanding i.e. 17 years and 3 months. But the fact remains that she was minor at the time of the incident and she was not of consenting age to give consent for physical relations.

6. Medical evidence shows that there was penetration by penis. Hymen was also ruptured. Medical evidence further shows that the victim had a cut by knife on her left wrist. There was evidence of biting. Statement of victim under Section 164 of the Code

of Criminal Procedure shows that she was subjected to beating by the applicant by means of wire. Learned counsel Smt. Kutti submits that the statement of the landlord does not indicate that the victim was subjected to beating. Only after recording of evidence, it will be clear as to what value is to be attached to the testimony of the landlord. At this stage, there is evidence in the form of medical report and in the form of statement under Section 164 of the Code of Criminal Procedure that the applicant had subjected the victim to beating.

7. In the cases cited by learned counsel for the applicant, it is held that the victim was of the age of understanding and was capable of understanding the consequences of her acts. However, in none of the cases there is evidence to show that the victim was subjected to beating. In the case at hand, the victim is a minor and she was subjected to beating. In this view of the matter, I am not inclined to release the applicant on bail. If he is released on bail, there is every possibility of the applicant pressurising the witnesses. Hence the order:-

ORDER

- i) Application is rejected.

ii) Fees of the appointed counsel is quantified at Rs. 5,000/-.

iii) It is clarified that the observations made in the above order are restricted to the decision of this application only and the Trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

iv) Application stands disposed of.

(M. G. SEWLIKAR)
Judge

dyb