

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.327 OF 2021**

Sukesh Shyamjit Gautam .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Sachin Pandey with Mr. Ashok B. Mishra for the Applicant.

Ms. J.S. Lohokare, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 21ST SEPTEMBER, 2021.

P.C:-

1. The Applicant, aged 25 years, is charged for offences punishable under Sections 376, 354 and 506 of the IPC and Sections 4, 8 and 12 of the POCSO Act in C.R. No.37 of 2020, which came to be registered with Vanrai Police Station on 04/02/2020. The Applicant came to be arrested in the said C.R. on the very same day and, since then, he remains incarcerated.

2. The complaint is lodged by the victim girl herself, who

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was aged 15 years and 11 months, on the day when she reported about the incident to the concerned police station. In the complaint lodged by her, she referred to an incident dated 19/12/2019, where she states that the present Applicant, who was residing in her neighbourhood and to whom she was acquainted with, called her inside the room and by bolting the door, against her will and without her consent, committed forcible sexual intercourse with her. She narrates that in the act, she sustained an injury on her right cheek. After the incident, when she left the room, she was threatened by the Applicant not to disclose the incident to anyone and, on account of this reason, she did not divulge the incident to anyone. It is alleged that on 04/02/2020, her mother enquired from her as to how she has sustained the injury on her cheek and she divulged the incident to her mother, which resulted in lodging the complaint to Vanrai Police Station on 04/02/2020, wherein the Applicant came to be arraigned as accused. The birth certificate of the victim girl has been placed on record which establishes her date of birth as '29/10/2004' and she was minor at the time when the incident took place. The statement of the victim's mother is also recorded, where she gives a different narration and states that before 10 days, her tenant had cautioned her about the movement of her daughter and apprised her that the Applicant, who was running a juice centre was behind her. The mother enquired with the victim girl, but she did not respond. She also enquired about the injury on the cheek of the victim, but there was no response. The mother

states that on 03/02/2020, when she was insisted of knowing the cause of injury, the victim girl opened up and disclosed to her about the occurrence of the incident of sexual assault at the hands of the Applicant, which took place on 19/12/2019. The statement of the father is based on the statement of his wife and the charge-sheet also compiles statement of another sister of the victim girl.

3. The victim girl was forwarded for medical examination on the complaint being lodged and the history of the sexual assault given by the girl referred to an incident dated 19/12/2019 in the form of a sexual assault. The victim again improved her version when she states that on 03/02/2020, the Applicant again asked her to accompany him, but was confronted by her mother and, therefore, he could not succeed in his plan. The medico-legal examination report surprisingly does not record any injury on the cheek of the victim girl, which the mother has noticed on the previous day, i.e. on 03/02/2019, which prompted the victim girl to narrate the incident and, that is how, it is stated that the complaint came to be lodged on 04/02/2020, but the medical report is conspicuously silent on the said injury. Further, when column No.19 of the said report is perused, which is in the form of a report on local examination of genital parts, the doctor has recorded “No *fresh injury*”. In the column of the samples to be collected, the doctor has recorded that no samples have been collected and the reason given is that since the sexual assault

happened before 46 days, it is not collected. Same is the reason given *qua* the swab to be collected. In the provisional medical opinion, the doctor certified “*Sexual assault cannot be ruled out*”. In the final opinion column, the same opinion is reiterated. It is not clear from the record as to what is the basis for the doctor to arrive at such a conclusion. In any case, this opinion is by an expert and subject to the prosecution proving the sexual assault through this expert evidence, the Applicant can be held guilty of commission of rape/sexual assault.

4. Perusal of the material compiled in the charge-sheet does not inspire confidence since the victim is at variance with her statement recorded under Section 164 of the Cr.P.C., where she corroborates her version about establishing physical relationship without her consent, but about the surrounding circumstances, she has stated that she was threatened by the Applicant to the effect that he would stab her, if she discloses the incident to anyone else. Without offering any explanation for the time-gap, the victim has stated that she disclosed the incident to her mother and a report came to be lodged. In her statement recorded under Section 164 of the Cr.P.C., she gives an aggravated version of threat of the Applicant, which she has neither narrated in the complaint nor narrated to her mother, when the incident was divulged by her. True it is that the sole testimony of the prosecutrix shall form the basis of conviction, provided it inspires confidence. In any case, the discrepancies and

inconsistencies in the case of prosecution can always be filled up at the time of trial and the prosecution may come up with a consistent version through the witnesses when they are made to depose before the court. However, this would all depend on the outcome of the trial.

5. *Prima facie*, appreciating the material, it appears to be sketchy in nature. Since the Applicant remains incarcerated and in the backdrop of this material, he is entitled to be released on bail.

Learned A.P.P. however, states that the Applicant is a resident of Uttar Pradesh and, therefore, the order should necessarily impose a condition ensuring that the Applicant makes himself available to face the trial. Upon such an objection, learned counsel appearing for the Applicant states that the Applicant shall continue to reside with his sister in the address, which is supplied by him in the court and which is to the following effect.

“C/o. Ms. Sumon Goutam w/o Mr. Vinod Gautam
Cell No.8591439202
Room No.12, Chawl No.2,
Shree Samarth Chawl, Ambika Nagar,
Near Shiva Sena Office
Diva (East), Dist. Thane.”

The concern of the learned A.P.P. is a justiciable one and the following order would serve the ends of justice.

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Needless to state that observations are *prima facie* in nature and only restricted to the adjudication of the bail application.

: ORDER :

- (a) The Applicant – **Sukesh Shyamjit Gautam**, shall be released on bail in C.R. No.37 of 2020 registered with Vanrai Police Station, District Mumbai on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall, on his release on bail, reside with his sister at the address mentioned above and shall not leave Thane District, without prior permission of the trial court.
- (d) The Applicant shall mark his presence in the Vanrai Police Station, Dist. Mumbai on the first

Monday of every month between 10.00 a.m. and 02.00 p.m., till framing of the charge.

- (e) The Applicant shall not enter the area of Shivshankar Nagar, Goregaon (East), Mumbai, and, in no way, make any attempt to contact the victim girl.

6. The Application is allowed in the aforestated terms.

7. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]