

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.205 OF 2020

Vishnu Sitaram Sarode

Applicant

versus

The State of Maharashtra

Respondent

Mr.Ganesh Gupta i/by G.G.Legal Associates for applicant.

None present for Respondent no.2.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th August 2021

PC :

1. The applicant is seeking bail in CR No.306 of 2019 registered with Manchar Police Station for offences under Sections 376, 376(2) (i) (j), 353(D), 506 of Indian Penal Code and under Sections 4,6,8 and 12 of Protection of Children from Sexual Offences Act, 2012.

2. The FIR was lodged by the victim herself. The age of victim at the time of lodging the FIR was 16 years 5 months. It was alleged that in September-2018 the victim noticed that the applicant was stalking her while she was going to school. In December-2018 the accused approached her and tried to strike conversation with her. He represented that he is employee in a company and the victim was called at his premises. The victim questioned him about reason for visiting his room premises. Thereafter accused again approached her and questioner her for not visiting his premises. She was threatened. On the same day she visited the flat of accused. She went inside the house. The accused had allegedly forceful sexual intercourse with

her. She was threatened that she should not disclose the incident to anyone or else she and her family members would face dire consequences. In January-2019 and February-2019 somewhere in first or second week, the accused had subjected her to sexual intercourse in his flat against her wishes. She was threatened. The victim did not disclose the incidents to her family members. The accused took the victim to government hospital. Both of them gave their names as husband and wife. She was examined. Thereafter it was found that victim was pregnant. The accused left the victim. The family members then noticed that the victim had conceived and the FIR was lodged on 19th July 2019.

3. The statements of witnesses were recorded. Investigation was completed and charge sheet was filed. The applicant preferred application for bail before Sessions Court, which was rejected vide order dated 8th November 2019.

4. Learned counsel for applicant submitted that the allegations in the FIR that victim was subjected to forceful sexual intercourse are false. There are no criminal antecedents against applicant. He is in custody for a period of about two years. Assuming the allegations to be true, the tenor of the FIR indicate that relationship was consensual. The pregnancy was terminated. The DNA test was conducted but the report is still awaited. There is delay of about seven months from the last incident in lodging the FIR.

5. Learned APP submitted that the victim was minor at the time of incident. The victim has alleged that she was forced to have physical relationship. The FIR does not indicate that relationship is

consensual. Since the victim was minor, the consent is immaterial. The order of Sessions Court indicate that applicant was a married person. The victim has performed marriage with another person. In rejoinder, learned counsel for applicant submitted that observations of the Sessions Court that applicant is married person, is not correct. He has not yet performed marriage. Learned advocate for intervenor submitted that the victim hails from a poor family. The delay in lodging the complaint has been explained in the complaint itself. The victim was minor. She was threatened. The DNA report is still awaited.

6. On perusal of the complaint/FIR, it is apparent that the complainant/victim had alleged that accused was stalking her in December-2018. At his request she had visited the premises and in 2018 the accused had subjected her to sexual intercourse. Thereafter on two occasions she had visited the residential premises of applicant and similar acts were committed. This indicates that victim and the accused were in relationship. The pregnancy was terminated. Although DNA test was conducted, report is awaited. Considering the factual aspects, further detention of the applicant is not warranted. He is in custody from 20th July 2019. There are no criminal antecedents against him. Hence, I pass following order :

ORDER

- (i) Bail application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No. 306 of 2019 registered with Manchar Police Station, District Pune, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report Manchar Police Station once in three months on every first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence, and shall not contact complainant and/or victim in any manner whatsoever;
- (v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

MST