

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 106 OF 2021

XYZ

...Appellant

Versus

1. The State of Maharashtra
At the instance of Nigadi Police Station,
Pune.

2. ABC

...Respondents

...

Mr. Jahanara Sarkhot i/b. Mr. Ramji T. Kotali for appellant.
Mr. J.P. Yagnik, APP for State.
Mr. Akshay Deshmukh for Respondent No. 2.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON : 8th JULY, 2021.
DELIVERED ON: 10th AUGUST, 2021.**

JUDGMENT [PER S.S. SHINDE, J.]:

1. Admit.

2. On admission, the learned APP waives services of notice on behalf of Respondent-State, and with the consent of learned counsel appearing for the parties, the matter is taken up for hearing.

3. At the outset it is required to be noted that since the allegations leveled by the informant are in respect of the alleged

sexual assault identity of the appellant and informant needs to be concealed, hence, the appellant is referred to as “XYZ” and the informant is referred to as “ABC”. The Registry is directed to maintain the record accordingly.

4. The present appeal is directed against the order dated 11.08.2020 passed by the learned Additional Sessions Judge, Pune, below Exhibit-1 in Criminal Bail Application No. 1237/2020 thereby rejecting the bail application of the appellant.

5. The prosecution story in brief is as under:-

The mother of the victim aged about 12 years, lodged a report mentioning therein that on 29.02.2020 the victim went to school. At about 9.42 am, the first informant went to her regular work to earn livelihood for survival and at work place she received a phone call informing that three person beat the victim girl. The first informant reached at her house and upon inquiry with the victim, victim girl told that at about 9.30 am during recess, she went at one shop in front of her school for bringing some project articles. At that time, one rickshaw came and appellant and other accused pulled the victim girl inside the said rickshaw. One of the accused namely Ajay was driving the said rickshaw. The appellant and accused Kailash pressed the mouth of victim girl and threatened her that

they will kill her mother i.e. the first informant. Accused Kailash touched her chest and the present appellant tried to remove her panty. Thereafter, appellant and both co-accused pushed her from that rickshaw. The victim girl narrated the incident to one person and watchman on duty at Pavale ground.

6. Learned counsel appearing for the appellant submits that the FIR filed by the Respondent No. 2 is out of vengeance, inasmuch as, there is previous enmity between the parties and as a result the parties have filed complaints against each other. As per the prosecution case the incident had taken place on 29.02.2020 at around 9.30 on 29.02.2020, the school was up to 9.30 am only. Therefore, there is no question of having recess on said date. If the alleged offence had taken place on 29.02.2020, the victim girl ought to have suffered some pain in her genitals. However, on the day of alleged incident the victim girl did not suffer any pain and she never stated in her statements dated 29.02.2020 and 10.03.2020 about penetrative sexual assault. It is also clear from the CCTV footage that the victim girl was not thrown out of rickshaw as alleged, but she herself jumped from the rickshaw. The victim girl mentioned the time of incident as 9.30 am and as per CCTV footage the time is 9.19 am, it clearly proves that the alleged incident is concocted story.

7. It is further submitted that the first informant and her family members used to quarrel with family members of the appellant/accused and neighbors. Therefore, family members and neighbors have filed various complaints with Nigadi Police Station, Pimpri-Chinchwad, Pune, against the misconduct and misbehavior of the first informant and her family members. It is also submitted by the learned counsel for the appellant that the first informant and her family members are in habit of filing false cases and no such incident had taken place and even due to previous enmity, the appellant has been falsely implicated in the alleged offences.

8. Learned counsel for the appellant submits that till date the charge is not framed and there is no possibility of framing charge and commencing trial within a reasonable period. It is submitted that the medical evidence does not support the prosecution case. Learned counsel for the appellant invited our attention to the grounds taken in the appeal memo and other documents and statements of witnesses which are placed on record and submits that there is no material evidence collected by the investigating officer against the appellant and there are chances of acquittal of the appellant, therefore, the appellant is entitled to be released on bail.

9. On the other hand, learned APP appearing for Respondent-State and Mr. Akshay Deshmukh, the learned counsel for Respondent No. 2 jointly submits that the appellant has committed serious and heinous offences and therefore, the learned Additional Sessions Judge, Pune, has rightly rejected the application filed by the appellant for bail.

10. We have appreciated the rival contentions and with the able assistance of learned counsel for the appellant, learned APP appearing for Respondent-State and learned counsel for Respondent No. 2, we have carefully perused the grounds taken in the appeal memo and annexures thereto. It appears that the FIR has been lodged on the same day of the incident. It appears that the incident had taken place in between 9.00 am to 10.00 am on the relevant date. One Madhav Jagdambe, who was working as security guard at Hanuman Gym, Yamuna Nagar, Nigdi, Pune, has stated in his statement that one girl i.e. the victim girl came to him and narrated the incident at about 9.38 am. There are other witnesses whose statements are recorded including grandmother of the victim girl, wherein she stated that at about 7.00 am, the victim girl left the house and thereafter, after few hours she came to know about the alleged incident. There are other witnesses also whose statements

have been recorded by the investigating officer. The first informant who is the mother of victim girl has narrated the incident in the FIR. In Column No. 25 of the medical certificate issued by the doctor, it is mentioned as under:

History and clinical examination is consistent with vaginal penetration with age of hymenal injury within 24 hours of time of examination. Injuries mentioned in general physical examination are simple in nature, of age within 24 hours from time of examination.

11. The said medical report is signed by the doctor, who has examined the victim girl. It appears that the medical examination of the victim girl was done on 29.02.2020, at about 10.00 pm, on the very same day of incident.

12. From the perusal of statement of victim girl, the statement of mother of victim i.e. the first informant, other accompaniments of the chargesheet and in particular the medical report, it is abundantly clear that there is sufficient material including medical report which *prima facie* indicates the involvement of the appellant in the alleged offences. From the perusal of the order passed by the learned Sessions Judge, Pune, it appears that the Court after adverting to the material collected by the prosecution observed that the victim, victim's family and

accused are residing in same vicinity and in case the appellant is released on bail, the appellant may tamper with the prosecution evidence/witnesses. It is not necessary to elaborate the reasons. Suffice it to say that, the FIR was lodged with promptitude and on very same day the victim girl was taken for medical examination and the opinion of doctor lend support to the prosecution case. The case in hand is not a simple case, but the age of the victim girl at the relevant time was 12 years and also she belongs to SC/ST community. The outcome of such offences alleged to have been committed by the appellant has impact upon the society.

The Sessions Court, Pune in the impugned order observed that the medical certificate *prima facie* shows involvement of the appellant, there are injuries on private and other parts of body of victim, the applicant and victim are residing in same locality and there are previous complaints, and, rightly rejected the application for bail filed by the appellant. It is also relevant to mention that the two co- accused are absconding.

13. In view of discussion in foregoing paragraphs, we are of the opinion that the reliefs claimed in the appeal cannot be granted. Merely, because previous complaints against each other i.e. accused and victim are pending, is no ground for entertaining the present

appeal, when this Court is satisfied that there is *prima facie* sufficient material on record, in the nature of substantial evidence, which corroborates the medical evidence. Hence, the appeal is devoid of any merits and same stands dismissed.

14. The observations made hereinabove are *prima facie* in nature and confined to the adjudication of the present appeal only.

15. We direct the trial Court to frame the charge, if already not framed, and conclude the trial within nine months from today. In case, the trial is not concluded within nine months from today, liberty to the appellant to renew the prayer for grant of bail.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)