

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.893 OF 2021

Sagar Navneet Sonavane .. Applicant

Vs.

The State of Maharashtra .. Respondent

...

Mr. Vinod Kashid with Mr. Sumit Bhoite for the Applicant.

Ms. A.A. Takalkar, A.P.P. for the State.

Ms. Rushita Jain, appointed advocate for Respondent No.2.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 17TH SEPTEMBER, 2021.

ORDER:-

1. The Applicant came to be arrested on 13/09/2020 by the Ghatkopar Police in C.R. No.623 of 2020 invoking offences punishable under Section 376(2)(h)(n) of the IPC and Sections 4, 6, 8 and 12 of the POCSO Act. He seeks his release on bail on the grounds of his false implication and that he is a young boy and since the charge-sheet is filed, his further incarceration is unwarranted.

AJN

2. Heard Mr. Kashid, learned counsel appearing for the Applicant and Ms. Takalkar, learned A.P.P. appearing for the State as well as Ms. Rushita Jain, learned advocate appointed through the Legal Aid, to represent the Complainant.

3. The prosecutrix, who approached the police station and lodged the complaint narrated that while residing with her grandmother, she used to often visit the grocery shop, where she crossed path with one boy, who introduced himself to her and expressed desire to establish friendship. It is narrated by her that whenever she used to visit the grocery shop, the boy used to take her to his house and establish physical relationship. When the girl started vomiting and felt pain in her stomach, she was taken to the hospital and when Sonography was conducted, it was revealed that she was carrying pregnancy. She delivered a baby boy on 27/08/2020 and on the basis of the information from the hospital, the FIR came to be registered against the present Applicant. The child born, was handed over to the Child Welfare Committee.

4. The FIR named the present Applicant as accused, but when the statement of the victim is perused, it reveals that she did not disclose his name and referred to the person as Sagar, without giving his full name. In her supplementary statement, the victim has stated that she does not know the full name and address of

Sagar. When specifically asked whether the Test Identification Parade has been conducted before arraigning the present Applicant as accused, the answer is in the negative.

5. The charge-sheet includes the statement of the doctor, who has stated that the victim had visited her on 27/05/2020 for medical check-up and, she had disclosed her age to be 18 years and that she was unmarried. She requested for termination of her pregnancy since it is informed that she was four months' pregnant. However, when Sonography was conducted, it was realized that she was carrying pregnancy of 27 to 28 weeks and, therefore, the pregnancy could not be terminated. On 27/08/2020, she was admitted to the hospital and delivered a baby boy.

6. The charge-sheet includes statements of persons, who were acquaintance of the victim girl and residing in the neighbourhood. Her birth certificate has also been obtained from the Head Master of the school, which records her date of birth as 20/07/2004. She was also subjected to ossification test for determining her age and the report received shows that she is aged between 14 to 16 years.

7. During the course of investigation, the DNA report is received, which is tendered in the court. The said report rules out the possibility of the Applicant being the father of the child,

to whom the prosecutrix has given birth on 27/08/2020. The submission of learned counsel for the Applicant is to the effect that he has not been identified as the person, who established the physical relationship with the victim and the DNA report excludes him as the genetic father of her child and, therefore, the case of the prosecution becomes doubtful.

8. It is true that in a rape case, the accused can be convicted on the sole testimony of the prosecutrix, if it inspires confidence. If the version given by the prosecutrix is not supported by any medical evidence or whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court is expected to seek corroboration and shall not act on the solitary evidence of the prosecutrix. It is equally true that the evidence of the prosecutrix should not be suspected and should be believed, more so, as her statement has to be evaluated at par with the statement of injured witness and if the evidence is reliable, no corroboration is necessary. However, the same cannot be universally and mechanically applied to the facts of every sexual assault case, which comes before the court. The Apex Court in the case of **Raju v. State of Madhya Pradesh reported in (2008) 15 SCC 133** has observed as under:

“11. It cannot be lost sight of the fact that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and

damage to the accused as well. The accused must also be protected against the possibility of false implication...”

9. The DNA report, which is a scientific evidence does not indict the present Applicant as the father of the child borne out of the relationship maintained by the person named as Sagar with the victim. The Applicant is charged with a serious offence under the POCSO, but since the DNA report does not indict him, at this stage, he deserve his release on bail, though he may take the consequence of the charge faced by him at the time of trial.

Needless to state that his release on bail is on account of the observations made above, which are *prima facie* in nature and will not be binding upon the judge, who try the Applicant under the serious charge of rape and sexual assault. Hence, the following order:

: ORDER :

(a) The Applicant – **Sagar Navneet Sonavane** shall be released on bail in C.R. No.623 of 2020 registered with Ghatkopar 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) Since the charge is already framed, the Applicant should attend the trial on the dates assigned, and shall not commit any default in marking his presence before the Special Court as per its direction.

10. The Application is allowed in the aforestated terms.

11. 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.]