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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1876 OF 2021**

Bhaskar Pundlik Shinde

....Applicant.

V/s

The State of Maharashtra

.....Respondent

Ms. Meghna A. Gowalani i/b Karim Pathan for the Applicant.

Mrs. J.S. Lohokare, APP for the Respondent/State

Shri Manjunath Singe, DCP, Zone-IX, present.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 23, 2021

P.C.:-

1] Applicant came to be arrested on 15/10/2020 in C. R. No.489 of 2020 registered with Oshiwara Police Station for the offence punishable under Sections 363, 354, 376 of the IPC and Sections 4, 8, 12 of POCSO Act.

2] Prosecution story against the Applicant is that the victim, after having quarreled with her mother, left her home and joined company of the Applicant. Applicant, taking undue advantage of situation in which victim was, committed sexual offence. Victim was below the age of majority i.e. 18 years.

3] Submissions of learned Counsel for the Applicant are, Applicant is falsely implicated in the crime pursuant to the complaint lodged by the mother of the victim. She would invite attention of this Court to the contents in the complaint, narration of history of the offence to the doctor, report submitted by Forensic Science Laboratory in the matter of chemical analysis of clothes and other material seized during investigation. According to her, there is no direct evidence available on record to connect the Applicant to the crime in question. As such, Applicant is entitled to bail.

4] Learned APP submits that the fact that victim was a minor and even if she was in love with the Applicant, that cannot be formed to be the basis for supporting theory of false implication, as the victim had not attained the age of majority. As such her consent cannot be considered as valid consent in law. Learned APP would further urge that statement of victim and complainant depict prima facie involvement of the Applicant.

5] Considered rival submissions.

6] From the complaint, it is apparent that the victim had quarrel with her mother and her mother slapped her, she having not obeyed line of her instructions. As such, the victim voluntarily left the home, joined company of the Applicant and traveled to various places in his car. It is alleged that the Applicant has sexually assaulted the victim in the vehicle. It is further inferred from the record that victim tried to commit suicide when her mother slapped her by causing injury to her wrist. The said claim is supported by medical evidence on record. It is further to be noted that victim voluntarily joined company of the Applicant and after she parted the company of the Applicant, instead of uniting with her mother, she decided to stay away from her family members. Next day, victim was apprehended by the police and as such complaint came to be lodged by mother of the victim. Aforesaid conduct of the victim prima facie narrates that she voluntarily joined company of the Applicant.

7] As far as medical evidence on record is concerned, fact remains that report of Forensic Science Laboratory has not substantiated the claim about happening of the incident of rape, as has been claimed. Narration of the history rather depicts that the victim remained

voluntarily in the company of the Applicant. Applicant has already suffered incarceration for more than a period of one year. Considering the fact that even the charge is not framed and trial is likely to take couple of years, in my opinion, case for grant of bail is made out.

8] Applicant is directed to be released on bail in C. R. No.489 of 2020 registered with Oshiwara Police Station for the offence punishable under Sections 363, 354, 376 of the IPC and Sections 4, 8, 12 of POCSO Act, on executing P. R. Bond in the sum of Rs 25,000/- with one or more sureties in the like amount. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence. Applicant shall remain outside the jurisdiction of the concerned Police Station till conclusion of the Trial.

9] Since this Court has noticed that learned APP in the matter was not getting appropriate assistance from the Investigating Officer in spite of repeated orders of this Court, summoned Deputy Commissioner of Police of the concerned Police Station to assist the Court in the matter.

10] Mr. Manjunath Singe, Deputy Commissioner of Police, Zone-IX has tendered his affidavit.

11] The affidavit discloses shocking state of affairs in the matter of delay caused by the Magistrate in recording statement of the victim under Section 164 of the Cr.P.C. This Court appreciates the approach of the Deputy Commissioner of Police in giving minute details, thereby demonstrating that in spite of request made by the Investigating Officer, the concerned Court of the Magistrate has delayed recording of statement under Section 164 of the Cr.P.C.

12] In sexual offence like one which is alleged in the present case, sanctity of the statement of victim recorded under Section 164 of Cr.P.C. is well recognized in law. It appears that concerned Investigating Officer has requested the Magistrate, 39th Court, Vile Parle, Mumbai on 29/10/2020 to facilitate recording of statement of victim under Section 164 of Cr.P.C. In spite of lapse of more than a year statement of the victim is not recorded though requested by the Investigating Officer. It is further brought to my notice in the aforesaid

affidavit of Deputy Commissioner of Police that the matter is now posted for recording statement of the victim on 05/01/2022.

13] Narration of the proceedings in the matter of delay in recording statement of the victim, as reflected in paras 3, 4, 5 and 6 of the affidavit of the Deputy Commissioner of Police, really reflects disturbing facts. This Court, even in the past, has come across such a situation in which the Magistrate, instead of recording statement of the victim under Section 164 of Cr.P.C. on the very same day or at the earliest, has delayed the same for considerable period which runs for weeks and months.

14] In the aforesaid backdrop, this Court is constrained to pass the following order:-

(a) Investigating Officer to produce copy of this order before the concerned Magistrate on the next date of hearing i.e. on 5/1/2022 on which date the Magistrate is directed to complete recording of statement of victim, as has been scheduled without

further delay.

(b) Registrar (Judicial-I) and Registrar (Legal & Research) are directed to consider narration made in the affidavit of Deputy Commissioner of Police Zone-IX dated 23rd November, 2021 and observation hereinabove and shall issue appropriate directions to all the Magistrates who are dealing with such prayers of the Investigating Officers for recording of the statement of the victim in cases of sexual offences, expeditiously.

(c) It will be worth to suggest that once request of the Investigating Officer comes before the Magistrate, Magistrate shall not delay proceedings of recording of statement but for reasons to be recorded in writing and shall complete the said process, in any case, within seven days of receipt of such request.

15] This Court appreciates the assistance rendered by Mr. Manjunath Singe, Deputy Commissioner of Police, Zone-IX for bringing aforesaid facts to the notice of the Court.

(NITIN W. SAMBRE, J.)

Corrected as per order dated 26/11/2021.