

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1734 OF 2021

Krishna Chandra Ramsurat .. Applicant

Vs.

The State of Maharashtra .. Respondent

...

Mr. Prashant Pandey with Mr. Bilal Ahmed Siddiqui for the Applicant.

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

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 17TH SEPTEMBER, 2021.

P.C:-

1. The Applicant seeks his release on bail being charge-sheeted for the offence punishable under Sections 363, 366(A), 376, 506(2) of the IPC and Sections 4 and 6 of the POCSO Act.

2. In connection with the said C.R., the Applicant came to be arrested on 02/08/2020 and since then, he remains incarcerated. His release is sought on the ground of false implication and also on the ground that the relationship between the Applicant and the prosecutrix was consensual and, therefore, the offence with which he is charged, cannot be made out.

AJN

3. With the assistance of learned counsel for the Applicant and learned A.P.P., I have perused the material compiled in the charge-sheet. The complaint is lodged by the father in respect of an incident dated 02/08/2020 when he informed the concerned police station about his daughter being sexually assaulted by the Applicant and the incident reported to him by his daughter is narrated by stating that she was forced into a physical relationship. The prosecutrix is subjected to medical examination on 03/08/2020 and the final opinion expressed is that there are no signs of any forcible sexual assault, but the sexual assault cannot be ruled out.

4. The statement of the victim girl came to be recorded on 06/08/2020, wherein she had admitted about her acquaintance with the Applicant and the attempts made by him to establish friendship with her. The incident dated 02/08/2020 is narrated by her in great detail and she has alleged that the Applicant forcibly committed sexual intercourse with her on the pretext that in any case, they are going to get married. Pertinent to note that the age of the victim on the date of the incident is 13 years and 5 months.

5. The statement of the victim is also recorded under Section 164 of the Cr.P.C., where she speaks in sync with her statement to the police and states that she was threatened to follow the

Applicant and when she entered his house, he committed forcible sexual intercourse with her, which was against her will and consent.

6. Section 114A of the Evidence Act, which has been inserted by the Criminal Amendment Act No.13 of 2013, creates a presumption as to absence of consent in certain case of sexual assault particularly, Section 376 of the IPC. When the case of the prosecution is that the victim girl did not consent for the sexual intercourse, which is alleged to have been committed on 02/08/2020, the burden will have to be discharged by the accused that she has consented. Merely because the friendly relationship was shared by the Applicant with the prosecutrix, does not permit him to establish physical relationship since the girl is minor and when she specifically stated before the police as well as in her statement recorded under Section 164 of the Cr.P.C. that the act is without her consent and against her will, a *prima facie* offence is made out against the Applicant. Since the age of the prosecutrix is 13 years and 5 months on the date of the incident, merely because the Applicant is a young person would not entitle him for being released on bail.

7. For the aforesaid reason, the Application is rejected.

[SMT. BHARATI DANGRE, J.]