

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

BAIL APPLICATION NO. 2726 OF 2019

Pratik Vilas Shelar,
Aged: 24 years, Occ: Education,
Residing at Parmeshwar Krupa,
Opp: Rupam Marble, Khambalpada,
Dombivali West, Tal: Kalyan,
District: Thane.

At present lodged at Kalyan District
Prison, Adharwadi at Kalyan

... Applicant

Vs

1 The State of Maharashtra
At the instance of Senior Inspector
of Police, Dombivali Police Station,
vide their C.R.No.I-260 of 2018 ... Respondent No.1

2 Smt. Anuja Abhimanyu Shitole,
Age: 42 yrs., Occ: Housewife,
residing at B/402, Pechale Society,
Kelkar Road, Opp: Gurudev Hospital,
Dombivali (E), Thane ...Respondent No.2
Respondents

...

Mr. Manoj Mohite, Senior Advocate i/by Mr. Sandeep
Kumar Singh for the Applicant.

Mr. Yogesh Dabke, APP for the Respondent No.1-State.

Mr. Anjani Kumar Singh i/by Mr. Siddhesh S. Sutar
advocate for Respondent No.2.

PSI Ajinkya More attached to Dombivali P.Stn. Present.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 5th MARCH, 2021.
PRONOUNCED ON : 17th MARCH, 2021.

JUDGMENT:

Heard learned counsel for the applicant, intervenor and the learned Additional Public Prosecutor for the State.

2 Applicant seeks his enlargement on bail in connection with Crime No.I-260 of 2018 registered with Dombivali Police Station for the offence punishable under Sections 376-D, 363, 506 of the Indian Penal Code, 1860 ('IPC' for short) and Sections 3,4,8 and 12 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short)

FACTS-PROSECUTION CASE:

3 Victim a complainant, is, twelfth standard student. At the material time, she was 16 year old. On the friendship day, i.e., on 5th August, 2018, she met the applicant to whom she knew since one year. Co-accused in the subject crime is, juvenile-in-conflict-with law. Victim alleged, on the pretext of having a joy ride on the scooty, victim accompanied applicant and the co-accused, at Kambalpada. All three reached at Kambalpada, Dombivali at around 8.15 p.m. whereafter they went in a room allegedly belonging to applicant and/or his family. Victim alleged, applicant and the co-accused committed forcible sexual assault on her although she resisted the same. She was threatened of dire consequences if she would reveal about the assault to anyone. It appears, in the meantime, victim's mother was searching her as cell phone of the victim was reported switched off. After reaching home, she

narrated the incident to her mother and thereafter report was lodged with Dombivali Police Station.

4 Applicant was arrested on 6th August, 2018. Investigation is over and the charge-sheet has been filed.

SUBMISSIONS & REASONS:

5 Mr. Mohite, learned Senior Counsel for the applicant has taken me through the medical reports, what's app chats between the applicant and the victim and the reports of the Chemical Analyser-Forensic Science Laboratory, to contend that, material on record does not indicate that the victim was sexually assaulted by two persons. Mr. Mohite, submits that what's app chats indicates and suggests intimacy between the applicant and the victim. I refrain, myself from commenting on the what's app chats. However, Chats also suggest, habit of the victim and the applicant of smoking ganja (or colloquially smoking pot).

6 In Gurbaksh Singh Sibbia v. State of Punjab¹, a constitutional Bench of Supreme Court, held that '*bail decision must enter cumulative effect of variety of circumstances justifying the grant or refusal of bail.*'

7 Be that as it may, victim was examined by Doctor on 6th August, 2018. She told him, two of her gent friends fell down her, and sexually assaulted her simultaneously. However, while she was examined, no injuries were noted on, her chest or back. Forensic Medical examination report of victim of sexual assault shows, no injuries on body, were noted. It may be stated that Part (X) of the report says, "no evidence of injuries suggestive of application of force was found." Yet, incident narrated by the victim suggests, she was forcibly called by her two gent friends at 8.30 p.m. at Kambalpada and sexually assaulted her. Thus, the narration in the medical papers, prima-facie, suggests,

1 1980 (2) SCC 565

victim improved her tale,since while lodging complaint, she reported that, she accompanied the applicant and the co-accused for a ride on the scooty. It may be stated, though the forensic medical examination report says that overall findings were consistent with the sexual assault it was subject to Forensic Science Laboratory report. I have perused the Forensic Science Laboratory report. Clothes of the victim and of the applicant were sent to Forensic Science Laboratory for examination. As well, vaginal swab was also sent. In so far as the clothes are concerned, no semen was detected on the clothes of the victim and so also vaginal swab of the victim, no semen was detected.

8 Thus, the medical reports and the Forensic Science Laboratory report, together leads me to infer that prima-facie, allegations of penetrative sexual assault by the applicant and the co-accused on the victim was not likely. It may be stated that victim narrated incident to medical officer on two occasions and her narration suggests that

she was forced by the applicant and the co-accused to accompany them and also shows, both fell her and forcibly committed sexual assault on her. Had this been true assertion, medical examination of the victim and the Forensic Science Laboratory report would suggest and corroborate her assertion.

9 Applicant is 24 year old boy and is in custody since 5th August, 2018, i.e., nearly for two years and six months.

10 The application was vehemently opposed by the complainant's advocate. He would argue that what's app chat would suggest that applicant lured victim to the place with ill design in his mind and, therefore, Court may not grant him bail; however, the trial may be expedited.

11 A report was called to ascertain whether trial

could be expedited. It is reported that 184 sessions cases of undertrial prisoners are pending in the Court out of which forty are on daily board from 2017 to 2021.

12 In consideration of cumulative effect of the circumstances, applicant is directed to be released on bail. Hence, following order:

ORDER

(i) The applicant in Crime No.I-260 of 2018 registered with Dombivali Police Station, shall be released on executing PR bond for the sum of Rs.30,000/- with one or more sureties in like sum.

(ii) The applicant shall attend the concerned police station once in a month, i.e., on second Monday of every month commencing from April, 2021 between 11 a.m. to 1 noon till framing of the charge.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on

bail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case

13 The application is accordingly allowed and disposed of.

14 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

Shambhavi
N. Shivgan

Digitally signed by
Shambhavi N.
Shivgan
Date: 2021.03.17
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(SANDEEP K. SHINDE, J.)