

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.807 OF 2020

Mukesh Rampher Yadav .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. Ashok R. Jauswar for the Applicant.

Ms Trupti M. Khamkar for the Complainant.

Mr. S.H. Yadav, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 26th JULY, 2022

P.C:-

1. The applicant is an accused of offence punishable under Sections 376(2)(n) and 506(2) of Indian Penal Code read with Sections 4, 5(L)(N), 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). He came to be arraigned as an accused in CR No.391 of 2018 registered in Goregaon Police Station, which resulted in registration of the offence on the complaint filed by the victim girl who is aged 17 years.

2. On 07.07.2018, the complainant reported to the police station by informing that she is residing on the given address and her father is residing in other part of the city on account of his work. Her mother had also gone to the native place for attending a marriage.

The girl narrated that the applicant is residing in the neighborhood and she clarified that he is residing in the same house with a partition being drawn in the room which where they are staying. His uncle and two are also brothers residing with him. She is acquainted with the applicant and his father.

3. It is stated in the complaint that on 01.07.2018, the applicant came to ask for water and he forcibly committed sexual intercourse with her, but since she was petrified, she did not report about the said incident. After 3 days, again the act was repeated at around 12 noon and at this time, she was threatened that she should not report about the incident to anyone.

On 06.07.2018, again at 10 o'clock in the morning, it is alleged that he repeated the incident. On 07.07.2018, he again took her to the room and while he removed her clothes, her cousin brother Niraj walked into the room, and therefore, she came out of the room and her version is, since she felt protected, because Niraj has stepped into the room, she disclosed about the past incidents of sexual assault upon her.

On her version, offence came to be registered.

4. During the course of investigation, the statement of the victim girl is recorded alongwith the statement of her younger sister, who state that on 07.07.2018 the applicant entered into the room and she was shown a video which according to her was obscene. Her sister was called out by

the applicant and she was pulled inside the room.

5. The medical report which examined the victim girl in column no.18, which pertain to local examination of genital parts, do not refer to any fresh injury, edema or bleeding. The opinion of the doctor is as under:-

“Sexual violation cannot be ruled out.”

6. The victim girl is aged about 16 years and there is no justification offered by her as to why she did not raise any grievance, when she was alleged to have been sexually assaulted by the applicant on 01.07.2018, 04.07.2018 and 06.07.2018. The applicant is a boy aged 25 years and *prima facie*, the possibility of the two indulging with each other with the consent of the victim cannot be overruled, since in the peculiar facts of the case, when in one room which was partitioned, the applicant was staying with his other relatives and if she could have raised a cry for help, she could have been rescued.

7. In any case, at present the investigation is complete and the applicant is incarcerated since 07.07.2018.

The learned APP state that till date charge is not framed, which can be necessarily lead to the conclusion that the trial would take considerable time.

8. In the wake of the above, the applicant deserve his release on bail. The applicant shall not in any way pressurize the victim girl or her family and he shall move himself from the area where the victim's family is residing.

The learned counsel for the complainant inform that the victim girl has moved to her native place and is not residing on the given address.

The observations made above are *prima facie* in nature and are restricted for deciding of the present application and shall not bind or influence the Special Court, while trying the accused.

9. Hence, the following order.

ORDER

(a) Application is allowed.

(b) Applicant - Mukesh Rampher Yadav shall be released on bail in connection with C.R.No.391 of 2018 registered at Goregaon Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(d) The Applicant shall mark his attendance to the Investigating Officer on first Monday of every month between 10.00 a.m. to 1.00 p.m. till framing of the charge-sheet.

(e) The applicant shall not travel outside Mumbai without prior intimation to the Investigating Officer.

(f) The applicant shall not reside in the locality where the family of the victim is residing.

(SMT. BHARATI DANGRE, J.)