

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

CRIMINAL APPEAL NO.452 OF 2022

Subhash Hari Ravgade Appellant
Vs.
The State of Maharashtra and Anr. Respondents

Mr. Rameshwar N. Gite for the Appellant.
Ms. Megha Bajoria appointed for Respondent No.2.
Mrs. P. P. Shinde, APP for Respondent-State.
Mr. Sachin R. Chaudhary, PSI, Sinnar Police Station.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 23rd AUGUST 2022.

P. C.

1. Heard learned counsel for the parties.
2. By this appeal, the appellant seeks his enlargement on bail in connection with CR No.1/2022 registered with the Sinnar Police Station, Nashik for the alleged offences punishable under sections 376(2)(i)(n), 506 of Indian Penal Code, 1860; Section 3(2)(5), 3(2)(5-A) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989; and under Section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

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3. Learned counsel for the appellant submits that the allegations as against the appellant are false and baseless. He submits that the appellant has been falsely implicated in the said case. According to the learned counsel for the appellant, the falsity is evident from the fact, that the DNA report shows that the child born to the prosecutrix was not of the appellant. In this connection, learned counsel relied on the DNA report, which is at page No.252 of the Appeal.

4. Learned APP opposed the grant of bail. She submits that the statement of the prosecutrix, aged 13 years, is that it was the appellant who had sexually assaulted her and that the said statement is duly corroborated by the statements of her mother and sister. She further submits that there are some discrepancies in the M.L.C numbers with respect to the CA reports which are at pages 248 and 252. She further submits that although the blood of the appellant was taken again for DNA sampling, however by that time, the child that was born to the prosecutrix was given in, for adoption and it was not possible to conduct the DNA analysis again.

5. Perused the papers with the assistance of the learned counsel for the parties.

6. The prosecutrix is a young girl, aged 13 years. She has stated in her complaint/FIR, that her father died one year prior to the incident and that she was residing with her mother and siblings. She has stated that her mother was working in the agricultural field; and that she was studying in the 8th standard at the relevant time. The appellant is stated to be working as a peon, in the grampanchayat, at the relevant time. According to the prosecutrix, the appellant was known to the family and that after death of her father, the appellant started visiting their house, frequently. She has further stated that 8 months prior to the lodging of the complaint, the appellant would come to their house in the afternoon, when her mother was out for work; that the appellant would give her brother and sister something to eat and send them out of the house and thereafter, the appellant would sexually assault her; that when she tried to ward off the said assault, the appellant would threaten her with dire consequences. She has stated that because of the threats of the appellant, she did not disclose the said incident to any person.

She has further stated that the appellant would come frequently every 2-3 days and that she was sexually assaulted around 5 times. According to the prosecutrix, her mother realized that the prosecutrix's stomach had bloated and hence asked her, pursuant to which she disclosed the sexual assault on her by the appellant. Thereafter, the prosecutrix's mother took her to a Doctor and after the sonography was conducted, the prosecutrix was found to be 7 months pregnant. The said statement of the prosecutrix, aged 13 years *prima facie* inspires confidence. The said statement is at page 24 of the appeal. The said statement is corroborated by the statement of the prosecutrix's sister. The prosecutrix's sister has stated that the appellant would come to their house and ask them to leave the house and thereafter, he would be alone with her sister i.e. prosecutrix.

7. Although the DNA report shows that the appellant is not the father of the child, *prima facie*, it appears that there is some anomaly with respect to M. L. case numbers in the said CA reports which are at page Nos. 248 and 252. It appears that the blood sample of the appellant was taken again recently, however, by that

time, the child's blood sample could not be collected, as the child was given in adoption. Be that at it may, *prima facie* the allegations are serious in nature. Having regard to the statement of the prosecutrix aged 13 years who was sexually exploited, by the appellant, aged 49 years, this is not a fit case to release the appellant on bail. It appears that the prosecutrix is from the lower strata of the society and lives with her mother and siblings and hence the possibility of the appellant tampering with the witnesses, who are all ladies cannot be ruled out.

8. Considering the aforesaid, the appeal is dismissed.

9. We make it clear that the observations in the order are *prima facie* for consideration of the bail. The learned trial Judge to conduct the trial on its own merits, uninfluenced by the same.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.