

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

BAIL APPLICATION NO.2144 OF 2021

Rajesh Shejrao Shinde

... Applicant

V/s.

The State of Maharashtra and anr.

... Respondents

**PRIYA
RAJESH
SOPARKAR**

Digitally signed by
PRIYA RAJESH
SOPARKAR
Date: 2022.05.04
10:22:53 +0530

Mr.Sunny A. Waskar alongwith Mr.Dilip Gupta, Advocates for the Applicant.

Mr.A.A.Palkar, APP for Respondent No.1/State.

Mr.Sandeep R. Karnik, Advocate for Respondent No.2.

**CORAM : VINAY JOSHI, J.
DATE : 28th APRIL, 2022.**

P.C.:-

1. The applicant is seeking regular bail in Crime No.2177 of 2020 registered with Malwadi Police Station for the offence punishable under Sections 376, 354, 341, 417 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Besides usual ground it is canvassed that the incident as narrated by informant is doubtful. It is argued that since beginning the prosecution case is about forcible sexual intercourse, however it is not supported by medical evidence. It is argued that intimate acquaintance might have forced family members to lodge false report.

3. The State as well as learned counsel appearing for informant resisted bail. It is submitted that physical injury is not necessary to constitute alleged offence. It is the submission that victim being minor her consent assumes no significance. Moreover, it is contended

that after lodgment of FIR accused absconded and therefore considering all these aspects bail is prayed to be rejected.

4. At the instance of report lodged by mother of victim, crime was registered. Mother had hear-say information on the basis of which she reported the matter. The victim girl was about 16 years of age at the time of occurrence. After 3 days from occurrence victim's statement was recorded in question and answer form. It is her case that the applicant who is a neighbouring resident had caught hold her hand and dragged her to his house, locked the door from inside and by removing her clothes had sexual intercourse despite resistance. The victim stated that her grand-mother had seen both of them in the room on which she went outside and narrated things which were later on transmitted to the mother of victim. My attention is invited towards medical examination report. Though it indicate that hymen was teared, but it was old one. There were no injuries on the genital part of the victim. Medical Officer though stated that there is evidence of sexual intercourse, however there were no signs of fresh physical injuries. No doubt the victim being minor, her consent is immaterial, however on *prima facie* basis medical evidence can be looked to test the genuineness of the report. Victim's grand-mother though seen both of them from window, however she never stated anything about alleged act. There may be possibility of consensual relations, however that is to be established during the course of trial. The applicant is in jail from 4th December, 2020. Investigation is complete and charge-sheet has been filed. Having regard to all above facts, the applicant can be released on bail by putting him on certain terms. In view of that, following order:-

(a) The Application stands allowed.

(b) The Applicant/ accused Rajesh Shejrao Shinde is released on bail in connection with Crime No.2177

of 2020 registered with Malwadi Police Station for the offence punishable under Sections 376, 354, 341, 417 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on his furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall not enter within the territorial jurisdiction of concerned police station till the conclusion of trial.

(d) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution evidence.

(e) The application stands disposed in above terms.

(VINAY JOSHI, J.)

....