

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1383 OF 2020

Jwalasing Shivaji @ Thakursingh Nanawat	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Ashok P. Mundargi, Senior Advocate i/by Mr.Jayant J. Bardeskar,
Advocate for applicant.
Mr.M.G.Patil, APP, for State.
Mr.Kunal Shinde, Advocate for respondent no.2.

CORAM : PRAKASH D. NAIK, J.
DATE : 19th October 2022

PC :

1. Learned Advocate Mr.Shinde submits that he has instructions to appear for respondent no.2. He undertakes to file vakalatnama.
2. This is an application for bail in C.R No.441 of 2018 registered with Shikrapur Police Station, District Pune for offences under Sections 376, 506 r/w 34 of Indian Penal Code and under Sections 3,4,7 and 8 of Protection of Children from Sexual Offences Act.
3. The case of prosecution is that the marriage of victim was performed on 27th July 2018. On 30th July 2018 at about 4 pm the victim and her husband visited the house of complainant. At that time the victim had informed that on 29th July 2017 at about 1.30 pm when the victim and her husband had been to market for purchasing grocery, accused no.1 had called the husband on his cell phone and invited them for party/celebrations on account of their marriage. Accused no.1 picked up victim and her husband. The victim saw accused no.2, two ladies and driver were also present in

the vehicle. All of them went to Hotel Kailas. Applicant, his wife, victim and her husband went to hotel. Others were waiting in the car. Two rooms were booked. Accused no.1 and his wife consumed alcohol. The victim and accused no.2 were waiting in the neighbouring room. The victim's husband consumed excessive alcohol and went to sleep. Accused no.1 subjected the victim to sexual intercourse and accused no.2 helped him. This incident had occurred on 29th July 2018 and FIR was lodged on 31st July 2018.

4. Learned counsel for applicant submitted that there is delay in lodging the FIR. The applicant has been implicated on account of differences between two families. There is no proof of age of victim on record. The complainant has given her age as 15 years. The applicant is relying on Aadhar card of victim which indicate that her date of birth is 1st June 1996 and thus at the time of alleged incident she was more than 21 years. It is the case of prosecution that victim was married and thus age referred to in the statement of victim and the complainant is not genuine. The radiological test indicate that she was above 16 years but below 18 years. Medical evidence does not support prosecution case. The applicant is in custody from 13th October 2018 i.e. for a period of four years. The charge is not yet framed.

5. Learned APP submitted that statement of complainant, victim and her husband supports prosecution case. Statement of accused no.2 is also recorded wherein she has referred to the alleged incident being informed to her by accused no.2. Medical evidence supports prosecution case. The statement of hotel owner is also recorded, which stated that two rooms were booked in the hotel.

6. There is no document on record about proof of age of the victim. The radiological test shows that she is above 16 years but below 18 years. During medical examination she has given her age as 15 years, but the column relating to date of birth states that 'does not know'. The victim was married two days prior to the incident. There are no physical injuries on the person of victim. There are no signs of violence. Medical examination report, however, indicate that hymen was torn. It is pertinent to note that victim was married two days ago. Therefore no adverse inference could be drawn against applicant on the basis of tear in hymen. The applicant is in jail for a period of about four years. Considering the factual aspects , bail can be granted.

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with C.R No.441 of 2018 registered with Shikrapur Police Station, District Pune, on executing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for eight weeks in lieu of sureties;
- (iv) The applicant shall report Shikrapur Police Station once a month on every first Saturday between 11 am and 1 pm till further orders;
- (v) The applicant shall not tamper with evidence;
- (vi) The applicant shall attend Trial Court on dates of hearing regularly, unless exempted by Trial Court for some reason.

(PRAKASH D. NAIK, J.)