

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3342 OF 2021

Rohit @ Bhaiyya Dilip Kapure ..Applicant
V/s.
The State of Maharashtra & Anr. ..Respondents

Ms. Shubhangi Parulekar for the Applicant.
Mr. R.M.Pethe, APP for the Respondent/State.
Ms. Deepal Thakkar for the Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 15 FEBRUARY 2022

P.C.

1. By this application, the Applicant accused is seeking bail. The Applicant has been chargesheeted for the offence punishable under Section 376(2)(i) and 363 of IPC read with Section 4, 8, and 12 of the Protection of Children from the Sexual Offences Act, 2012, arising out of Crime No. 643 of 2020 registered with Bhosari Police Station.

2. The victim is stated to be a girl aged between 14 to 16 years at the time of the incident as per the report of the ossification test. She claims that she had left her house and come to Bhosari, Pune as her parents were trying to forcible marry her. She met and got

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acquainted with the Applicant and it is the material allegation that on 06.12.2020, the Applicant took her to Dighi hill on the pretext that they were going to attend the birthday function of friend of the Applicant Vishal Patil. However, according to her, the Applicant made her to drink beer and under the influence of the same, had sexual intercourse with her. She found herself lying on Dighi hill on the following morning at 6.00 a.m. On the basis of the complaint, the offence came to be registered. After the completion of the investigation, a chargesheet came to be filed.

3. I have heard the learned counsel for the parties.

4. It is submitted by the learned counsel for the Applicant that there is no birth certificate of the prosecutrix on record. It is pointed out that initially in the statement recorded on 06.12.2020, she claimed her age to be 18 years and in the subsequent statement, she claimed her age as 16 years, her date of birth being 03.09.2004. It is submitted that the victim had attained the age of understanding and the history given before the Medical Officer shows that the victim was also in a relationship with a different person and there are circumstances to indicate that she had voluntarily accompanied the Applicant on her own accord. The learned counsel also pointed out that Test Identification Parade was conducted after a period of 5 months

via video conferencing. It is also pointed out that the incident is alleged to have happened on a hill. However, there are no injuries on the person of the victim although she claims to have been subjected to forcible sexual intercourse.

5. The learned APP assisted by the learned counsel for the complaint stated that the victim has in clear terms attributed the incident to the present Applicant and also identified him in a Test Identification Parade. It is pointed out that this is not the stage where the evidence can be appreciated in details.

6. I have considered the submissions made.

7. Prima facie it appears that there is no documentary evidence in the form of school leaving certificate or birth certificate of the prosecutrix on record. Therefore, at this stage, we have to look to the report of ossification test which shows that the age of victim on 09.12.2020 was between 14 to 16 years. Thus, she was a child within the meaning of the said Act. She has prima facie implicated the present Applicant who had taken her to Dighi Hill under the pretext of attending a birthday party of Vishal Patil. She also claims that she was made to drink beer and after she got intoxicated, the Applicant had sexually abused her which aspect is supported by the medical evidence. As rightly

submitted on behalf of the APP, this is not the stage where the evidence can be appreciated in details.

8. Considering the over all circumstances, no case for grant of bail is made out.

9. The criminal application is rejected. The trial is expedited.

(C.V. BHADANG, J.)