

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

BAIL APPLICATION NO. 4247 OF 2021

Sumit Navnath Shinde

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Mahindra Sandhyanshiv with Mr. Vikas Shivarkar for the Applicant.

Mr. P.H.Gaikwad, APP for the State.

Mr. Piyush Toshnival for the Respondent No.2.

API V. Bhabhad from Hadapsar P. Stn.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : 30th NOVEMBER, 2022.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid applicant, who is facing trial in Sessions Case No. 2 of 2021 pending on the file of the learned Addl. Session Judge, Pune for the offences under Section 363, 366A, 376, 376(3)(n), 376D of the Indian Penal Code and Section 4, 6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012.

2. Heard Mr. Sandhyanshiv, learned Counsel for the applicant and

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Mr. Gaikwad, learned APP for the State, and Mr.Toshnival, learned Counsel for the Respondent No.2. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The father of the victim had lodged an FIR alleging that his minor daughter had left the house on 26.10.2020 at about 11.00 a.m. and that she had not returned home. He suspected that she was kidnapped by some unknown person. Hence, crime No.1546 of 2020 came to be registered against unknown person. In the course of investigation, the victim was traced. Her statement was recorded. Statement of the victim prima facie reveals that on 26.10.2020 at about 11.00 a.m. due to quarrel with her parents, she had left the house. On the way, she met co-accused Sagar, whom she knew by face. She informed him that she was proceeding to Parli. The co-accused volunteered to take her to the bus stop. She has stated that instead of taking her to the bus stop, the co-accused took her to a building at Ram Tekdi and had forcible sexual intercourse with her. He thereafter dropped her at Hadapsar bus stop. While she was waiting at the bus stop, another person approached her and tried to befriend her. He

disclosed his name as Mohan Phadtare (A5). The co-accused also volunteered to drop her to Parli. They boarded the bus and alighted at Vikramnagar. The co-accused took her to the house of one Satya. Uncle of Satya did not take them in the house, hence she spent the night on the terrace. She has alleged that said Mohan had sexual intercourse with her on the terrace. On the next date i.e. on 27.10.2020 Mohan took her to his house at Bopgaon. Thereafter, he and his brother Avinash (A1) took her to Saswad, where they consumed alcohol and thereafter they went to the forest area at Diveghat. Thereafter co-accused Avinash left the place and returned with his friend Somnath. Avinash and Somnath (A2) brought her to the house of Mohan. She has alleged that co-accused Avinash assaulted her and both Avinash and Somnath had forcible sexual intercourse with her. Mohan returned home on 28.10.2020 and when she requested him to drop her at Parli, he assaulted her and he again sexually abused her.

4. In the FIR the victim girl had named four accused, viz. Sagar, Mohan, Avinash and Somnath. Her supplementary statement was recorded on the very next date, wherein she had stated that while she

had met the co-accused Sagar at Hadapsar, he had called his friend Shinde, and thereafter both of them had taken her to the building at Ram Tekdi, where Sagar as well as Shinde had sexual intercourse with her.

5. It is true that the victim had not given the first name of the applicant in her supplementary statement. However, she has identified him in the Test Identification Parade. Learned Counsel for the Applicant states that the Test Identification parade was held after considerable delay. It is however to be noted that at this stage there is no material on record to indicate that the victim had an opportunity to see the applicant while he was in custody or prior to the Identification parade. The other discrepancies pointed out by the learned Counsel for the applicant in conducting the Identification Parade also cannot be considered at the stage for bail.

6. The material on record prima facie indicates that the victim was sexually abused by the applicant and the co-accused. The victim was medically examined and the doctor has opined that there is evidence of forcible vagino anal penetration with surface injuries as stated in the

report. A young girl, who is barely 16 years of age has been sexually assaulted by group of five persons. The offence is of serious nature. Considering the gravity of the offence, I am not inclined to grant bail. Hence the application is dismissed.

(ANUJA PRABHUDESSAI, J.)