

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.215 OF 2023

AJAY DHARMA SARVADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Abhaysinh K. Bhosle
APP for Respondent No.1/State : Mr. S. P. Sonpawale
Advocate for Respondent No.2 : Ms. Sheetal V. Salunke
...

CORAM : S. G. MEHARE, J.

DATE : 16-02-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/victim.

2. It is the case of the prosecution that on the day of the incident, the victim left her house as she was not willing to marry her fiance, who was the son of her maternal uncle. She met with a lady and asked her for water. The said lady inquired with her. That lady called the applicant and asked him to take her to Police Station. However, instead of taking her to police station, the applicant took her at his home and did forceful sex with her. Then she contacted her boy friend on telephone.

3. The learned counsel of the applicant would submit that the victim was not desirous to go to the house of her fiance as she had love affair with her boy friend. She sought the help from the applicant, so he barely helped her, but she has made the false allegations against him. On the next day of the alleged incident, she was medically examined, but there were no injuries to believe that there was a forceful sex. The victim might have an idea in her mind not to go to her parents' home and fiance, hence, she created a story of losing her virginity.

4. Per contra, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/victim would state that the statement of the victim would prevail over the medical report. Under the pretext to take her to police station, the applicant did sex with her. This shows the *mens rea*. Though, the medical evidence is silent, the victim's statement can not be thrown away. The offence is serious. They prayed to dismiss the application.

5. Perused the papers placed before this Court.

6. The prosecutrix has a case that instead of taking her to the police station, the applicant took her to his home and did forceful sex with her. At the time of alleged incident, she was 17 years 3 months old. The applicant did not deny that he gave her lift as he was called to the house of a lady whom she met first. The medical evidence is silent about injuries or signs of causing forceful sex.

The case appears balancing.

7. Considering the situation, the occurrence of the incident appears doubtful. The Court is not oblivious that the statement of the victim would prevail over the medical report. However, the Court need not to examine the witness as if it is a trial. The Court has to see the *prima facie* case. The medical report does not support in any manner. In a case of doubt, the benefit goes to the accused. Therefore, the application deserves to be allowed. Hence, the following order:-

- i) The application is allowed.
- ii) Applicant Ajay Dharma Sarvade be released on bail, on furnishing PB and SB of Rs.50,000/-, with one solvent surety of like amount in C.R.No.I-256 of 2022, registered with Yermala Police Station, District Osmanabad, for the offences punishable under Sections 376DA, 376(2)(j), 376(2)(n), 354D, 354A, 342, 323, 504, 506 read with Section 34 of the Indian Penal Code and Sections 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the conditions that,

- (a) He shall not contact the victim and shall not go her village till conclusion of the trial.
- (b) He shall attend the trial on each and every effective date.
- (c) He shall furnish mobile phone and correct address to the police station.

(S. G. MEHARE)
JUDGE

rrd