

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**LD VC DIST BAIL APPLICATION NO.34 OF 2020**

Vaibhav Bhanudas Ubale .. Applicant  
Versus  
The State of Maharashtra .. Respondent

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Mr.Subhash with Samarth Karmarkar, Supriyanka Maurya,  
Yashpal Purohit for the applicant.  
Mr. S.V. Gavand, APP for the State.

**CORAM: BHARATI DANGRE, J.**  
**DATED : 24<sup>th</sup> JULY 2020.**

**P.C:-**

1           The applicant has been arrested in relation to FIR No.194 of 2018 for the offences punishable under section 376 of the IPC and section 3, 4, 5(G), 5(J)II), 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”. On investigation, charge-sheet vide no.60 of 2019 has been filed in the Court of District and Special Judge, Pune on 25<sup>th</sup> September 2019. The accused has been charged under Section 376(d) of IPC along with two other accused persons and also the relevant provisions of the POCSO Act.

The submission of the learned counsel for the

applicant is that the applicant has been roped into the said offence without any rhyme and reason. The counsel placed heavy reliance on the DNA report of the child born out of the alleged act of sexual assault which do not trace the applicant as the father of the baby girl. The DNA report according to the learned counsel, sufficiently absolve the applicant of the act of sexual assault on the prosecutrix and since the charge-sheet is now filed, according to the applicant, a case is made out for grant of bail.

2 With the assistance of the learned counsel for the applicant, I have perused the charge-sheet which has been uploaded and also placed on record in physical form. The charge-sheet consists of a statement of the prosecutrix dated 9<sup>th</sup> November 2018. The said statement is elaborate one and runs into 4 pages. The said statement is recorded after the prosecutrix delivered a baby girl on 6<sup>th</sup> November 2018 and since her age at the time of the pregnancy was found to be below 18 years, the Koregaon Park Police station official had made inquiries with her mother. The statement was given by the prosecutrix in

presence of her mother and member of the Women Vigilance Committee, Gulshan Arif Shaikh.

3           The prosecutrix had narrated her woes and stated that she and her mother were residing separately from her father on account of the frequent fights between the couple. Her mother was incurring the expenditure of the household by doing petty household work in the nearby area. The prosecutrix was persuading her education in Morris High School Wadgaon Sheri when she was acquainted with one girl Shraddha. She happened to meet her again till both took admission in the same college in XI standard. She also became acquainted with another friend Apurva and it is these two girls who have stated in their statement to the police making reference to the date on which the incident took place.

4           When the prosecutrix was undergoing her 12<sup>th</sup> Board examination in February – March 2018 and while her last paper was of subject Geography and the prosecutrix with her two friends were studying together at Shraddha's house, she was

introduced to the applicant who was residing in the same locality. On the 3<sup>rd</sup> day, when she was introduced to the applicant, her friends took her to his house. For some reason, the other two female friends left her alone in the company of the applicant and the applicant took advantage of the situation. His two male friends in a pre-planned manner arrived in his house with some drinking and eating stuff. The applicant offered the prosecutrix some drink like Thumbs up, which contained some substance which made her feel sleepy and dizzy. The applicant asked the prosecutrix to rest in the bed-room while her friends returned. It is then alleged that the applicant and his two friends committed rape on her. The prosecutrix had narrated the entire incident in great detail which include the specification about the location of the flat of the applicant and the clandestine manner in which the three friends arrived in his flat. Pertinent to note that this description completely matches with the spot panchnama which forms part of the charge-sheet.

5 Fearing the outcome of the act, the prosecutrix did not reveal the incident or the fact that she was pregnant, to her

mother. It was only when she had pain in her stomach on 5.12.2018, her mother took her to the hospital and it was revealed to her that the prosecutrix is pregnant. When the police had arrived, the prosecutrix stated that the mother and the daughter were hesitant to report the incident to police and register an offence. However, one of the police personnel which she has described as 'Sheikh' tutored her to give a particular statement and on his instructions, she gave her first statement on 6.11.2018 where she implicated one Sony Tapkir and reported of an incident where she accompanied him in a car and where he established physical relation with her. According to the victim's statement, she gave the earlier statement on the dictate of Shri Shaikh and even told her mother of the same incident. However, subsequently, she gave a detailed statement on 9.11.2018 in form of a supplementary statement on the basis of which FIR has been filed and charge-sheet has also been presented to the Special Court. The statement of two friends of the prosecutrix, support her version to the extent that they went to flat of the applicant but what happened inside the flat is not

known to them. The prosecutrix was below 18 yrs of age at the time when the incident took place. She delivered a baby girl which has been forwarded to an orphanage and is leading her life there. The charge-sheet contain sufficient material against the applicant.

6           The case against the applicant is serious one of committing gang rape by three persons and taking advantage of a situation of a poor helpless victim girl. The applicant has indulged into an act of rape. The mere fact that the DNA report do not support the paternity is not ground to release the applicant at this stage. There is every likelihood that he will pressurize the victim girl once being released on bail. The fact that he is a young boy itself is not sufficient to release him on bail, in light of the material collected by the investigating agency against him.

No case for his release on bail is made out.

The application is rejected.

**SMT. BHARATI DANGRE, J**