

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION (ST.) NO.3242 OF 2020

Shubham Suresh Thorat .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Rajesh More for the Applicant.

Mr. S.V. Gavand, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 22ND DECEMBER, 2020.

P.C:-

1. The present Bail Application seeks release of the Applicant who has been charge-sheeted in C.R. No.140 of 2018 registered with Chaturshrungi Police Station for offences punishable under Sections 377, 323, 506 of the IPC and for offences under Sections 3(a), 3(c) read with Sections 4, 5(e), 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POSCO). The Applicant came to be arrested on 05/02/2020 and is presently housed in Yerawada Jail, Pune. Pertinent to note that the Applicant is aged 20 years.

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2. The offence came to be registered on the complaint filed on 05/02/2020 by the mother of the victim boy. She has reported that on 04/02/2020, when she returned home in the evening, her son aged 13 years, appeared frightened and when enquired, he informed her that the Applicant had asked him to accompany him to his house at 3.00 p.m. and when he went to his house, he locked the door from inside and he was made to sleep on the coat and remove his clothes. When he asked the Applicant, why he is doing so, he gave blows on his back and ribs. It is then alleged that the Applicant attempted to have carnal intercourse with him and when he raised an alarm, the Applicant pressed his mouth and once again attempted to commit the unnatural act. When he felt dizzy because of the act, he was asked to wear the clothes and threatened that if he report about the incident to anyone, he would be killed. This resulted into a report being lodged on the very next day i.e. on 05/02/2020 and an offence was registered under Section 377 of the IPC apart from the relevant Sections of POCSO Act.

3. On completion of investigation, charge-sheet came to be filed. The young victim boy was subjected to medical examination on 05/02/2020 at 4.15 p.m. The examination of the private parts revealed that there is tear of approximately 2 x 0.2 cm. over anus at 6 O' clock position, reddish without bleeding.

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The Applicant was also subjected medical examination on 08/02/2020 and he was also referred to Psychiatric Expert, who reported that there was no active psycho-pathology or no active psycho-sexual dysfunction. The final opinion was expressed that there is nothing to suggest that he is not capable of performing sexual intercourse.

4. The charge-sheet contain statements of the witnesses, who report the narration of the victim boy. His own statement was recorded on 07/02/2020 and the victim boy narrates the incident in the same way which has been narrated by his mother while lodging her complaint. The material contained in the charge-sheet was examined by the Additional Sessions Judge, Pune, while considering the application and after relying on the opinion of the doctor on examination of the victim reflecting the tear, his application came to be rejected on account of the gravity of the offence and also the possibility of tampering of the prosecution evidence.

5. The prosecution has collated all the necessary material in the charge-sheet to establish the charge under Section 377 of the IPC and the Applicant would be tried with said material. The allegations against the Applicant are undisputedly serious in nature and he will face the penalty, if convicted, for committing such a grave offence. He has been incarcerated since February, 2020.

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Considering the fact that the Applicant himself is aged 20 years and is a young boy, with the antecedents which have been reported and which reflect that he is already in conflict with law, a report was called from Yerwada Central Prison by order dated 03/12/2020.

6. Mr. Gavand, learned A.P.P. has placed on record the report from the Yerawada Central Prison in which the Superintendent of Prison has reported that the behaviour of the Applicant in jail since the date of his incarceration i.e. on 10/02/2020 is satisfactory. He was also subjected to psychological assessment and he was screened for psychiatric disturbance. It is reported that there is no psychological disturbance or any psychiatric illness. On his examination on 21/12/2020, he is found to be co-operative and communicative. His thoughts are coherent and no abnormality is reported. The Applicant's behaviour and mental condition is found to be stable, is the opinion expressed by the Clinical Psychiatrist, Yerawada Central Prison.

7. Apart from the seriousness of the accusation, which he is facing, his impressionable age will also have to be taken into consideration while dealing with his bail application. He is reported to have indulged in the past, when he was juvenile in offences invoking Sections 323 and 324, 504, 506 of the IPC. Barely attaining the majority, in the year 2018, he is involved in two offences registered in Chaturshrungi Police Station; one invoking

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Sections 323, 324, 504 and 506 with Arms Act and another offence invoking Sections 354 , 354A(1) of the IPC. Chapter proceedings were also initiated against the Applicant.

8. What makes a young boy turn to crime is a matter of indepth study. Factors like peer pressure, poor education, poor socio-economic status and neglectful childhood may be some factors. Though no crime can be justified on the ground that the circumstances around him makes a person criminal since punishment is the coercion used to enforce the law and it is one of the pillars of modern civilization. Providing a peaceful society life is the duty of a State. Lack of punishment causes the law to lose its face and may result in a lawless society. However the reformative approach to curb crimes and reform the convicts has come up in order to protect the basic rights, a human is entitled to. Across the globe, rehabilitation seeks to bring about fundamental changes in offenders and their behaviour. It generally works through education and psychological transformation to reduce the likelihood of future criminality. The purpose of the reformative theory also known as rehabilitative sentencing is to reform the offender as a person so that he may become a normal law abiding member of the community once again.

The theory of reformation, which is invoked at times on the global front, is not the one which should only be tested at the time when a person is convicted, at the time of commuting of sentence.

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Here is a young boy aged 20 years, who is already in conflict with law and as the learned counsel has argued, his long incarceration may turn him into a hardened criminal and the apprehension cannot be said to unfounded. However, at the same time for commission of the alleged acts which are legally prohibited, he will have to be punished.

9. The Applicant is barely 20 years old and deserves a chance for reformation though the offence with which he is charged cannot be wiped out and, on conviction, he should suffer the penalty prescribed. However, he deserves one chance of being out of prison to face the trial but also to start his life afresh awaiting his trial. This opportunity will determine whether he repents over his past alleged conduct or whether he continues to follow his antecedents.

10. In my considered opinion, he deserves to be released on interim bail. This will be, however, coupled with an additional stipulation that he will continue to undergo the counseling at the hands of Clinical Psychologists and this should be catered to by the Sassoon General Hospital, Pune. The Dean of the Sassoon General Hospital is requested to open a file in the name of the Applicant with Sassoon Hospital and entrust the Applicant to a Clinical Psychologist and a Psychiatrist from the said Hospital. The

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Applicant will report to them once in every month as per the availability of the concerned Psychiatrist and Psychologist. The record of the psychiatric assessment and the counseling given to the Applicant should be maintained and when the Applicant marks his attendance once in two months before the Trial Court, he would tender the said reports in the Trial Court. It is to be mentioned that the release of the Applicant is in the form of an experiment to work out on the reformation of a young accused person, awaiting trial expecting that the Applicant will not indulge himself further any unlawful act. The confirmation of this order would be subject to the further conduct of the Applicant. Liberty is granted to the prosecution to move for cancellation of the protection on noticing any criminal indulgence on the part of the Applicant.

ORDER

- (a) The Applicant – Shubham Suresh Thorat shall be released on interim bail in C.R. No.140 of 2018 registered with Chaturshrungi Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

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- (c) The Applicant shall report to the Psychologist and Psychiatrist of Sassoon General Hospital once in a month as per their availability. The Applicant shall tender the record of the psychiatric assessment and counseling given to him at the Sassoon Hospital, when he marks his attendance once in two months before the Trial Court.
- (d) The Applicant shall not set his foot in the jurisdiction of Chaturshrungi Police Station, Pune except for marking his presence before the Chaturshrungi Police Station, Dist. Pune once in a month between 11.00 a.m. 2.00 p.m. and he shall co-operate with the investigation.
- (e) The Applicant shall provide his residential address and telephone number of his father to the Investigating Officer.

11. Re-notify for 05/05/2021.

12. Mr. Gavand, learned A.P.P. is directed to forward a copy of this order to the Dean, Sassoon Hospital, Pune.

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13. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.

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