

Anand

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

BAIL APPLICATION NO.1307 OF 2015

Tohsif alias Chhotya Abdul Shaikh .Applicant

v/s.

The State of Maharashtra .Respondent

Mr.R.K.Dhaygude, Advocate, for the Applicant
Mrs.Rutuja Ambekar, APP, for the Respondent –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 07.09.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant
seeks his enlargement on bail in connection with
C.R.No.43 of 2015 registered with the Phaltan
Police Station, Satara, for the alleged offences
punishable under Sections 363, 366, 376(1),
376(2)(n), 376(d) & 506 of the Indian Penal
Code, 1870 and under Section 4 of the Protection

of Children from Sexual Offences Act, 2012.

3. The complainant is the prosecutrix, who at the relevant time was 16 and $\frac{1}{2}$ years of age. It is alleged by her in her complaint dated 29.03.2015, that on 26.03.2015 one Akshay Mane came on a Scooty and took her to one Machya's house. She has alleged that at that time, at Machya's house the present applicant was present. Thereafter, all of them consumed alcohol. She has alleged that the present applicant and Akshay Mane committed forcible sexual intercourse on her and thereafter, Akshay Mane and Machya dropped her back home. She has alleged that on 27.03.2015 again Akshay called her on phone and asked her to come near Jinti Naka at Phaltan. She has stated that at that time, Akshay Mane and Machya were present there and they took her in a white car. She has alleged that when they were proceeding to Pune,

the present applicant called on her mobile and told that he is coming to Khandala and that they should wait for him. Pursuant to the said telephonic call, Akshay Mane and Machya brought her to Khandala and picked up the present applicant. She has stated that all of them went to Pune and that the said persons took her to a lodge where Akshay Mane, Machya and the present applicant committed forcible sexual intercourse and thereafter, on the next date i.e. on 28.03.2015 they dropped her back at Satara and made her to sit in a S.T.bus going to Phaltan.

4. Learned counsel for the applicant submitted that the statement of the prosecutrix is inconsistent and contrary to the statement recorded subsequently i.e. in the supplementary statement dated 07.04.2015. He pointed out that in the supplementary statement dated 07.04.2015 the prosecutrix had for the first time,

mentioned the name of one Vishal Ingale, a juvenile accused, being present with the other accused. He submitted that in the said supplementary statement, the prosecutrix has disclosed that it was the present applicant who committed forcible sexual intercourse with her at the lodge. According to him, a perusal of the FIR and the supplementary statement show that the prosecutrix has changed her version.

5. Learned APP opposed the bail application. She has submitted that as far as the present applicant is concerned, the complainant has specifically disclosed his name in the FIR and the supplementary statement that it was the present applicant, who committed forcible intercourse on her. Learned APP also relied on the statement of an employee of the lodge one Nikesh Banduji Dharamthok in support thereof.

6. Perused the charge sheet in particular the statement of the prosecutrix. The name of the applicant appears in both, the FIR as well as in the supplementary statement, wherein she has alleged that the applicant committed forcible intercourse on her. A perusal of the statement of Nikesh Dharamthok shows that the present applicant had come to the lodge with the prosecutrix and that he had entered his name in the hotel register stating that the prosecutrix was his wife.

7. Considering the fact that the applicant has been named in the FIR and in the supplementary statement by the complainant this is not a fit case to enlarge the applicant on bail. The Application stands rejected and disposed of accordingly.

8. However, the trial of the applicant is expedited. Learned Judge shall make an endeavour to complete the trial as expeditiously as possible and preferably within one year from the date of receipt of this order. If for any reason the trial does not conclude within the stipulated period for no fault of the applicant, the applicant shall be at liberty to re-new his prayer for bail.

9. It is made clear, that the learned Judge shall decide the case on its own merits, uninfluenced by the observations made herein.

(REVATI MOHITE DERE, J.)

CERTIFICATE

Certified to be true and correct copy
of the original signed Judgment/order.