

Anand

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

BAIL APPLICATION NO.341 OF 2015

Miraj Vafati Khan alias Baccha .Applicant

V/s.

The State of Maharashtra & anr. .Respondents

Mr.S.D.Sherkhane, Advocate, for the Applicant
Mrs.Rutuja Ambekar, APP, for the Respondent
No.1 - State

CORAM : REVATI MOHITE DERE, J.

DATE : 28TH APRIL, 2015

P.C.

. Heard the learned counsel for the applicant and the learned APP for the respondent No.1 – State.

2. This is the second bail application preferred by the applicant. The first bail application was dismissed as withdrawn vide order dated 16.09.2014 passed in Cri.B.A.No.1395 of 2014. The order dated 16.09.2014 reads thus :-

"1. Learned APP submits that charged is framed. Sessions Court would commenced with recording of evidence on 18/09/2014. In view of this, learned counsel for the applicant seeks liberty to withdraw the application.

2. Liberty as prayed for is granted. Learned Sessions Judge seized with the matter shall conclude the recording of evidence within 3 months from 18/09/2014. In the eventuality that the trial is not concluded within 4 months, applicant would be at liberty to renew his prayer for bail. Application stands dismissed as withdrawn."

3. The learned counsel for the applicant submits that recording of the evidence, despite directions given by this Court has not concluded. He submits that pursuant to the liberty granted vide order dated 16.09.2014, the applicant has filed the present application, seeking his enlargement on bail in connection with C.R.No.390 of 2013 registered with the Powai Police Station, Mumbai, for the alleged offences punishable

under Sections 376, 366A, 328 r/w.34 of the Indian Penal Code along with Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act and Sections 4 & 5 of the Prevention of Immoral Trafficking Act. It appears that the victim-girl was 17 years old. She has alleged that her father was habituated to drinking and would assault her. She has alleged that the present applicant after promising marriage, took her to a temple, where they got married, after which, the applicant had physical relations with the victim-girl. The victim-girl is alleged to have run away and gone to Thane Railway Station, where she met two girls. All three are alleged to have stayed together 4-5 days. She has alleged that after the two girls left, she went to her aunt's house, that night. She has alleged that after a few days, one person by name Khanbhai came to her aunt's house and her aunt, her aunt's husband, Prabhakar and Khanbhai had a drink. She has alleged that her

aunt took some money from Khanbhai and forced the victim-girl to have drink. The victim-girl has alleged that she started feeling giddy after consuming the same. Next morning, she found herself without clothes and realized that she had been sexually assaulted. Pursuant to which the aforesaid complaint came to be lodged as against her aunt, Prabhakar and against the present applicant.

4. The learned counsel for the applicant states that the evidence of the victim-girl has been recorded and the same shows that she had gone with the applicant on her own accord as she was in love with him and that there was no force used on her by the applicant. He submits that the evidence shows that she had not disclosed her age to the applicant.

5. The learned APP also does not dispute the fact that the statement of the victim-girl has been recorded.

6. Perused the papers including the statement of the victim-girl recorded during trial. It appears that despite direction given by this Court vide order dated 16.09.2014, recording of evidence is not complete till date and that except for the statement of the victim-girl i.e. the complainant, no other witness has been examined. It appears that the trial is not likely to conclude expeditiously. Although consent is immaterial, as the victim-girl was a minor, however, considering the age of the applicant, who was 20 years old at the time of the incident and considering the material on record, and the liberty granted to the applicant to renew his prayer for bail, if the trial does not conclude before June, 2015, the applicant is enlarged on bail on the following terms and conditions:-

(i) The applicant be enlarged on bail on his furnishing P.R.Bond in the sum of Rs.15,000/- with one or two solvent sureties in the like amount;

(ii) The applicant shall attend the Court of learned Sessions Judge on every date and file an undertaking to that effect in the trial Court, soon after his release, from the jail, within one week;

(iii) The Applicant shall not tamper or attempt to influence the complainant or any persons concerned with the case;

(iv) The applicant to co-operate with the conduct of the trial;

(v) Upon failure to abide by any of the aforesaid conditions, the prosecution is at liberty to seek cancellation of Applicant's bail;

7. The aforesaid observations are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in

this order.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)